

BEHRING SEA.

Memoranda on Questions 1 to 5.

Authorities on search, seizure and self-defence.....	
A note of authorities arranged under seventeen heads.....	
Extracts from Wharton's International Law.—Right of search.....	
American reply to right claimed by Great Britain during the war with France to search neutral vessels on the high seas, and to seize her own subjects when found serving under a neutral flag.....	
Collection of authorities touching—	
1. A marine league as to extent of coastal jurisdiction.....	
2. The freedom of ocean fisheries.....	
3. Inland seas.....	
4. Hovering Acts.....	
5. Collection of Statutes and treaties touching the universal adoption of the marine league.....	
Memorandum on the extent of coast to which Articles VI and VII of the Treaty of February 16 (28), 1825, between Great Britain and Russia were respectively intended to apply.....	
Chronological notes on the progress of trade and discovery in the northern part of the North Pacific, with special reference to Behring Sea and the American coast.....	

UNITED STATES.

Correspondence respecting extent of maritime jurisdiction as claimed at various times by the United States.....	
A history of the Treaty of Arbitration and "Modus Vivendi".....	
Memorandum on the argument of the United States in its relation to international law.....	
Notes as to when and how the United States first attempted to exercise authority in Behring Sea outside of the ordinary three-mile limit.....	
Memorandum of M. E. Clunet.—Legal position of animals.....	
Point 5 of Article VI.—Protection of or property in seals.....	
Question 3 of case—	
I. Authorities and citations as to phrase "Pacific Ocean".....	
II. Notes bearing specially on the terms "North-west coast of America" and "North-west coast".....	
III. Memorandum on the maps referred to in the correspondence respecting the ukase of 1821.....	
IV. List of maps cited by Mr. Blaine, 17th December, 1890.....	
V. Notes on various maps examined in connection with the usage of the phrase "Pacific Ocean".....	
Memorandum on the question of closed seas.....	
Note on the general object of trade and mercantile enterprise on the north-west coast of America and the changes undergone by them.....	
Hair seal fishery, North Atlantic.....	
J. Veniaminoff, "Notes on the Islands of the District of Unalaska." St. Petersburg, 1840. Part II, pp. 349-382.....	
Extracts from Russian works, translated by Mr. Fairholme. Translation from Veniaminoff. Kaminsky.....	
Copy of a communication of Minister of Finances to Minister of Marine, dated April 9, 1820.....	
Protection and preservation of other seal herds.....	

NW
979.8
9 G78m

UNIVERSITY
BC
PUBLIC LIBRARY

8

unp

250035

1923 1

③

23
1

BEHRING SEA.

Authorities on Search, Seizure, and Self-Defence.

"Le Louis," 2 Dod., 210.

"The Antelope," 10 Wheaton, 66.

"The Apollon," 9 Wheaton, 362.

"The Marianna Flora," 11 Wheaton, 1.

"La Jeune Eugénie," 2 Mason, 409.

Buron v. Denman, 2 Ex., 167.

Hansard's "Parliamentary Debates," 3rd series, vol. cli,
p. 2078.

Wheaton's "International Law," 8th ed., s. 179, with
Mr. Dana's note (108).

Phillimore's "International Law," 2nd ed., vol. i, chapters X
and XI.

98

Wheaton

250035

2

In the case of "Le Louis," 2 Dod, 210, Lord Stowell said :—

"Upon the first question, whether the right of search exists in time of peace, I have to observe that two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct States. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbour; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all States meet upon a footing of entire equality and independence, no one State, or any of its subjects, has a right to assume or exercise authority over the subjects of another. I can find no authority that gives the right of interruption to the navigation of States in amity upon the high seas, excepting that which the rights of war give to both belligerents against neutrals. This right, incommensurable as its exercise may occasionally be to those who are subjected to it, has been fully established in the legal practice of nations, having for its foundation the necessities of self-defence, in preventing the enemy from being supplied with the instruments of war, and from having his means of annoyance augmented by the advantages of maritime commerce; against the property of his enemy each belligerent has the extreme rights of war. Against that of neutrals—the friends of both—each has the right of visitation and search, and of pursuing an inquiry whether they are employed in the service of his enemy, the right being subject, in almost all cases of an inquiry wrongfully pursued, to a compensation in costs and damages.

"With professed pirates there is no state of peace. They are the enemies of every country, and at all times, and therefore are universally subject to the extreme rights of war. An ancient authority—the Laws of Oleron—composed at the time of the Crusades, and, as supposed, by an eminent leader in those expeditions, our own Richard I, represents infidels as equally subject to those rights; but this rests partly upon the ground of notions long ago exploded, that such persons could have no fellowship, no peaceful communion, with the faithful; and still more upon the ground of fact that they were for many centuries engaged in real hostilities with the Christian States. Another exploded practice was that of Princes granting private letters of marque against the subjects of Powers in amity, by whom they had been injured, without being

able to
that co
general
a right
unappro
gerent
does not
is prom
alone it
They in
No such
and no

"Pir
new an
and ver
which
not the
every n
right, b
of crim
is thus
But to
necessar
to preve
the com
approac
on the
it will
search.
confer
foreign
or of
inquiry
not in
no comm
circums
Secondl
parties
univers
makes
till the
is a sl
a nation
which
legally
can cas
into its
must c
subject
law, it
law im
morali
must b
by gen
and by
and the

able to obtain redress from the Sovereign or Tribunals of that country. But at present, under the law, as now generally understood and practised, no nation can exercise a right of visitation and search upon the common and unappropriated parts of the sea, save only on the belligerent claim. If it be asked why the right of search does not exist in time of peace as well as in war, the answer is prompt: that it has not the same foundation on which alone it is tolerated in war—the necessities of self-defence. They introduced it in war, and practice has established it. No such necessities have introduced it in time of peace, and no such practice has established it. . . .

"Piracy being excluded, the Court has to look for some new and peculiar ground; but, in the first place, a new and very extensive ground is offered to it by the suggestion, which has been strongly pressed, that this trade, if not the crime of piracy, is nevertheless *crime*, and that every nation, and, indeed, every individual, has not only a right, but a duty, to prevent in every place the commission of crime. It is a sphere of duty sufficiently large that is thus opened out to communities and to their members. But to establish the consequence required, it is first necessary to establish that the right to interpose by force to prevent the commission of crime commences not upon the commencement of the overt act, nor upon the evident approach towards it, but on the bare surmise grounded on the mere possibility; for unless it goes that length it will not support the right of forcible inquiry and search. What are the proximate circumstances which confer on you the right of intruding yourself into a foreign ship, over which you have no authority whatever, or of demanding the submission of its crew to your inquiry whether they mean to deal in the traffic of slaves, not in your country, but in one with which you have no connection? Where is the law that has defined those circumstances, and created that right under their existence? Secondly, it must be shown that the act imputed to the parties is unquestionably and legally criminal by the universal law of nations; for the right of search claimed makes no distinctions, and in truth can make none; for till the ship is searched it cannot be known whether she is a slave-trader or not, and whether she belongs to a nation which admits the act to be criminal, or to one which maintains it to be simply commercial; and I say *legally* criminal, because neither this Court nor any other can carry its private apprehensions, independent of law, into its public judgments on the quality of actions. It must conform to the judgment of the law upon that subject; and acting as a Court in the administration of law, it cannot attribute criminality to an act where the law imputes none. It must look to the legal standard of morality; and upon a question of this nature, that standard must be found in the law of nations as fixed and evidenced by general and ancient and admitted practice, by Treaties, and by the general tenour of the Laws and Ordinances, and the formal transactions of civilized States." (Pp. 242, 243, 244, 245, 248, and 449.)

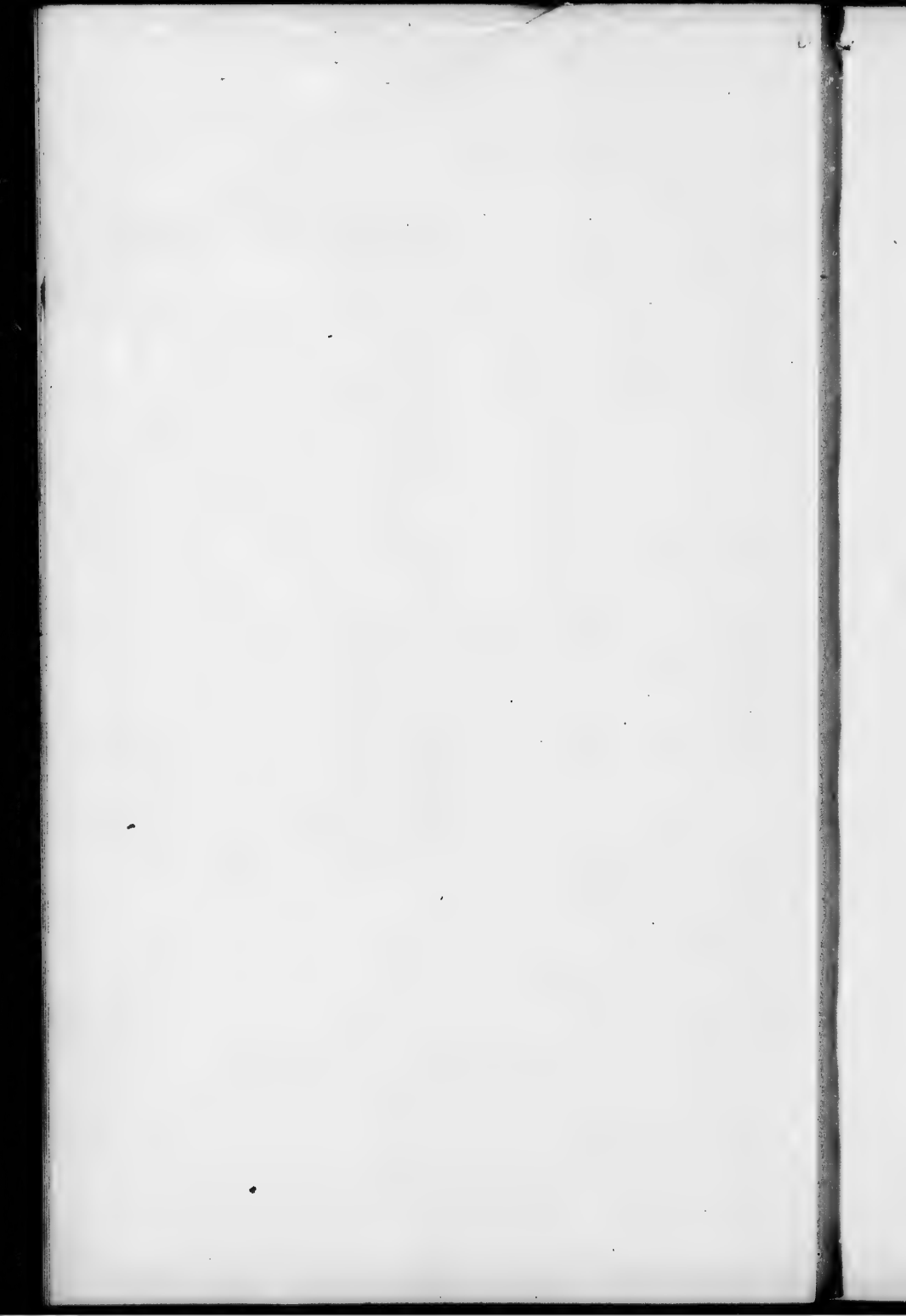
In the "Antelope," 10 Wheaton, 66, Marshall, C.J., delivered the opinion of the Supreme Court. After discussing several Slave Trade cases, he said :—

"This whole subject came on afterwards to be considered in the 'Louis' (2 Dodson's Reps., 238). The opinion of Sir William Scott in that case demonstrates the attention he had bestowed upon it, and gives full assurance that it may be considered as settling the law in the British Courts of Admiralty as far as it goes.

"The 'Louis' was a French vessel, captured on a slaving voyage, before she had purchased any slaves, brought into Sierra Leone, and condemned by the Vice-Admiralty Court at that place. On an appeal to the Court of Admiralty in England, the sentence was reversed.

"In the very full and elaborate opinion given on this case, Sir William Scott, in explicit terms, lays down the broad principle that the right of search is confined to a state of war. It is a right strictly belligerent in its character, which can never be exercised by a nation at peace, except against professed pirates, who are the enemies of the human race. The act of trading in slaves, however detestable, was not, he said, 'the act of freebooters, enemies of the human race, renouncing every country, and ravaging every country, in its coasts and vessels indiscriminately.' It was not piracy. . . .

"The right of visitation and search being strictly a belligerent right, and the Slave Trade being neither piratical nor contrary to the law of nations, the principle is asserted, and maintained with great strength of reasoning, that it cannot be exercised on the vessels of a foreign Power, unless permitted by Treaty. France had refused to assent to the insertion of such an Article in her Treaty with Great Britain, and, consequently, the right could not be exercised on the high seas by a British cruiser on a French vessel." (Pp. 118, 119.)



In the case of the "Apollon," 9 Wheaton, 362, the opinion of the Supreme Court was delivered by Story, J., who said:—

"The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction. And, however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction to places and persons upon whom the Legislature have authority and jurisdiction. In the present case, Spain had an equal authority with the United States over the River St. Mary's. The attempt to compel an entry of vessels, destined through those waters to Spanish territories, would be an usurpation of exclusive jurisdiction over all the navigation of the river. If our Government had a right to compel the entry at our custom-house of a French ship in her transit, the same right existed to compel the entry of a Spanish ship. Such a pretension was never asserted; and it would be an unjust interpretation of our laws to give them a meaning so much at variance with the independence and sovereignty of foreign nations.

"But, even supposing for a moment that our laws had required an entry of the 'Apollon' in her transit, does it follow that the power to arrest her was meant to be given after she had passed into the exclusive territory of a foreign nation? We think not. It would be monstrous to suppose that our revenue officers were authorized to enter into foreign ports and territories for the purpose of seizing vessels which had offended against our laws. It cannot be presumed that Congress would voluntarily justify such a clear violation of the law of nations. The arrest of the offending vessel must, therefore, be restrained to places where our jurisdiction is complete, to our own waters, or to the ocean, the common highway of all nations. It is said that there is a revenue jurisdiction which is distinct from the ordinary maritime jurisdiction over waters within the range of a cannon-shot from our shores. And the provisions in the Collection Act of 1790, which authorize a visitation of vessels within 4 leagues of our coasts, are referred to in proof of the assertion. But where is that right of visitation to be exercised? In a foreign territory in the exclusive jurisdiction of another Sovereign? Certainly not; for the very terms of the Act confine it to the ocean, where all nations have a common right, and exercise a common sovereignty. And over what vessels is this right of visitation to be exercised? By the very words of the Act, over our own vessels, and over foreign vessels bound to our ports, and over no others. To have gone beyond

this vo
sovereign
right of
ledged b
with mon
then, the
to a case
foreign
Apollon
house, an
wholly w
" The n
whether
The most
point is t
under the
that secti
a forfeitu
enforce a
in rem co
facts urge
it may no
of probab
matter of
obscurity
between
jure belli,
respect to
law of pr
merely ex
If there
right, to
of strong
to entitle
proceeds
expenses
far differ
cause has
except wh
tion from
peril; if
acquittal,
tort, unles
some Stat

this would have been an usurpation of exclusive sovereignty on the ocean, and an exercise of an universal right of search, a right which has never yet been acknowledged by other nations, and would be resisted by none with more pertinacity than by the American. Assuming, then, the distinction to be founded in law, it is inapplicable to a case where the visitation and arrest have been in a foreign territory. It appears to us, then, that the 'Apollon' was not bound to make entry at our custom-house, and that the arrest was, under the circumstances, wholly without justification under our laws.

"The next question which has been argued at the Bar is, whether there was in this case probable cause of seizure. The most that can, with correctness, be argued on this point is that there was probable cause to arrest the vessel, under the 29th section of the Collection Act; but neither that section nor any other law authorized a seizure as for a forfeiture in this case, much less a prosecution *in rem* to enforce a forfeiture; and so, indeed, the original libel *in rem* considered the case. But before adverting to the facts urged in support of the suggestion of probable cause, it may not be improper to consider how far the existence of probable cause can be inquired into, or constitutes matter of defence in a suit like the present. Some obscurity arose at the argument from not distinguishing between the effect of probable cause in cases of capture *jure belli*, and the effect in cases of municipal seizures. In respect to the former, no principle is better settled in the law of prize than the rule that probable cause will not merely excuse, but even in some cases justify, a capture. If there be probable cause, the captors are entitled, as of right, to an exemption from damages; and if the case be of strong and vehement suspicion, or requires further proof to entitle the claimant to restitution, the law of prize proceeds yet farther, and gives the captors their costs and expenses in proceeding to adjudication. But the case is far different in respect to municipal seizures. Probable cause has never been supposed to excuse any seizure, except where some Statute creates and defines the exemption from damages. The party who seizes, seizes at his peril; if condemnation follows, he is justified; if an acquittal, then he must refund in damages for the marine tort, unless he can shelter himself behind the protection of some Statute." (Pp. 370 to 373.)

In the "Marianna Flora," 11 Wheaton, 1, Story, J., delivered the opinion of the Supreme Court. He said:—

"It is necessary to ascertain what are the rights and duties of armed and other ships navigating the ocean in time of peace. It is admitted that the right of visitation and search does not, under such circumstances, belong to the public ships of any nation. This right is strictly a belligerent right, allowed by the general consent of nations in time of war, and limited to those occasions. It is true that it has been held in the Courts of this country that American ships offending against our laws, and foreign ships in like manner offending within our jurisdiction, may afterwards be pursued and seized upon the ocean, and rightfully brought into our ports for adjudication. This, however has never been supposed to draw after it any right of visitation or search. The party, in such case, seizes at his peril. If he establishes the forfeiture, he is justified. If he fails, he must make full compensation in damages.

"Upon the ocean, then, in time of peace, all possess an entire equality. It is the common highway of all; appropriated to the use of all; and no one can vindicate to himself a superior or exclusive prerogative there. Every ship sails there with the unquestionable right of pursuing her own lawful business without interruption; but whatever may be that business, she is bound to pursue it in such a manner as not to violate the rights of others. The general maxim in such cases is, "*sic utere tuo, ut non alienum laedas*." (P. 42.)

In the case of "La Jeune Eugénie" 2 Mason, 400, Story, J., said :—

"I am free to admit, as a general proposition, that the right of visitation and search of foreign ships on the high seas can be exercised only in time of war, in virtue of a belligerent claim; and that there is no admitted principle or practice which justifies its exercise in times of peace. It is unnecessary to scan opinions or authorities on the subject, since the point was not controverted at the argument, and it is no part of my duty to reascend to the source of its origin. But if, from a denial of a right of visitation and search on the high seas, it is meant to be concluded that there exists no right of seizure of any vessel on the high seas bearing a foreign flag, under any circumstances, I am not ready to admit the correctness of such a conclusion.

"The right of visitation and search is, in its nature, distinct from a right of seizure. A belligerent cruiser has a right to search all vessels found on the high seas, for the purpose of ascertaining their real as well as assumed character, and capturing the property of its enemies. The exercise of such a right, being strictly lawful, involves the cruiser in no trespass or wrong, entitling the party searched to damages if it shall turn out upon examination that there was no ground for the search, and that the property is in all respects neutral. If, indeed, upon such search, the captor proceeds to capture the vessel as prize, and sends her in for adjudication, and there is no probable cause of capture, he is liable to responsibility in costs and damages. But this is not for the search, but for the subsequent capture, which, being without sufficient reason, is treated as a tortious act, and a usurpation of possession. It does not, therefore, by any means follow that a right of search justifies a capture, so that the latter may not be deemed a gross violation of the rights of a foreign neutral ship. It is, indeed, difficult to perceive how a tortious capture, *jure belli*, can clothe a party with any more rights, in any respect, either as to evidence or grounds of condemnation, than a tortious seizure in time of peace. And the right of search, as such, neither protects nor aids a capture; if considered *per se*, the latter is incapable of justification.

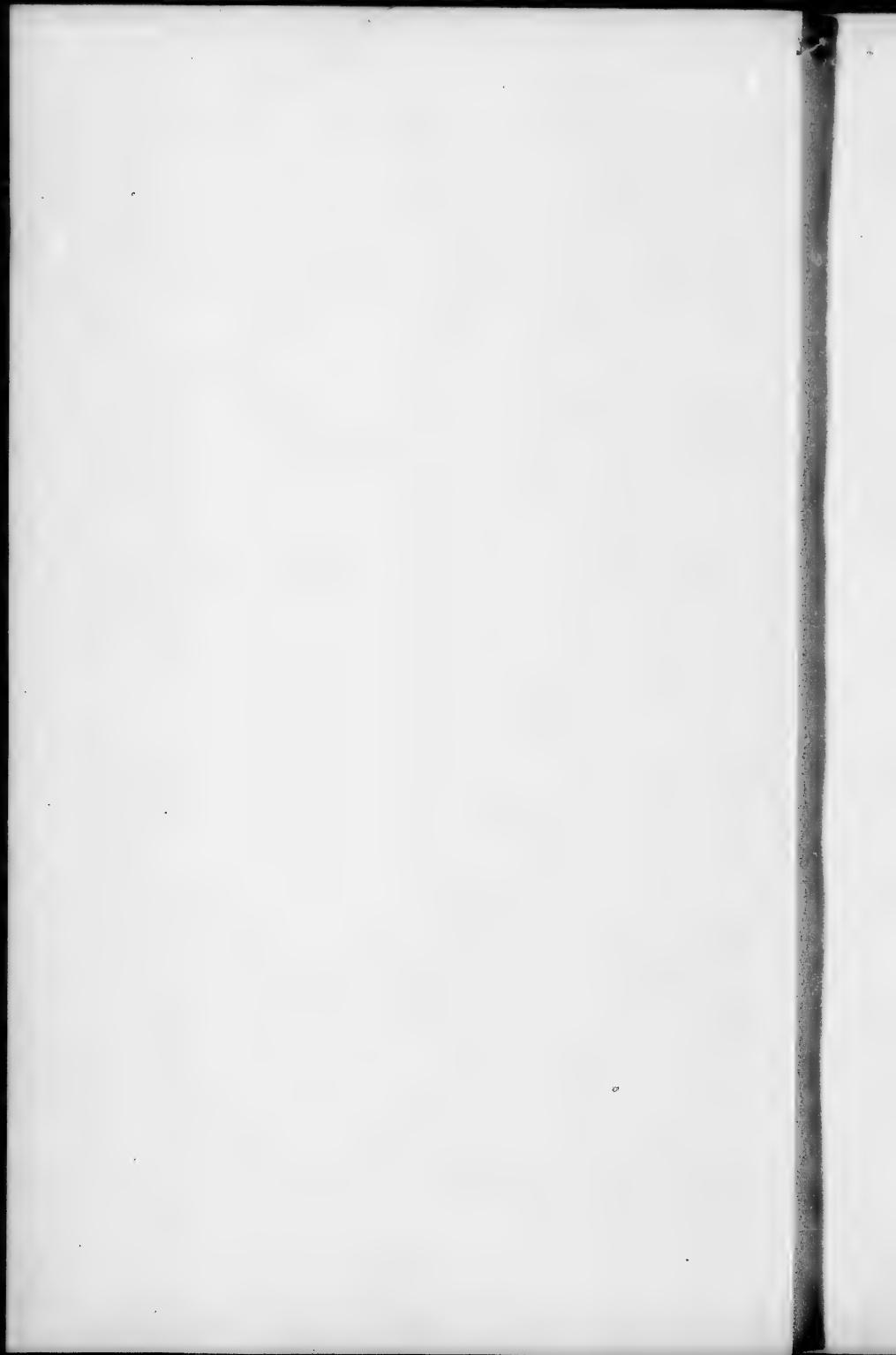
"But a right of seizure may exist on the high seas independently of any right of search, or the protection from damages which that right guarantees. For instance, no one can doubt that vessels and property in the possession of pirates may be lawfully seized on the high seas by any person, and brought in for adjudication. But such a seizure is at the peril of the party. If the property upon examination turns out not to be piratical, or piratically employed, the seizer is a trespasser *ab initio*,

and liable
justification
there was
will be ha
to seize pro
seas, which
after it a
found on
piratical o
genuine. I
exceptional
of that Hi
obey, to pu
is now the
if a foreign
territorial j
forfeiture is
the high se
she has offe
it cannot b
high seas b
search and
that a gene
right of se
understandi
peril, and is
but by the
condemnatio

" It appea
to seize the
high seas, w
and it cann
that the pr
foreign pape
right. Whe
foreigners ar
engaged in
no less true
cover of th
concert with
protected in
do not acqu
encroachmen
ship; but, n
of your own
case turns
damages; if
such a com
purposes lik
a sanctuary
alarming as
case, would
lightly to be
to abuse any
other nation
of power, to
the same ren

and liable, as such, to damages; and it will be no justification upon the principles of general law that there was probable cause of seizure. And yet no one will be hardy enough to contend that the mere right to seize property in the possession of pirates on the high seas, which right exists as well in peace as in war, draws after it a right of visitation and search of every vessel found on the high seas, to ascertain whether she be piratical or not, or whether her flag be assumed or genuine. If this example should not be thought unexceptionable, I may be permitted, under the sanction of that High Tribunal whose decisions I am bound to obey, to put one that has passed *in rem judicatem*. It is now the settled doctrine of the Supreme Court that, if a foreign vessel has committed any offence within the territorial jurisdiction of another nation, by which a forfeiture is incurred, she may be seized anywhere upon the high seas by the ships of the nation against which she has offended. And it is manifest that, in most cases, it cannot be ascertained whether a ship despoiled on the high seas be the offending ship or not without actual search and visitation. Yet it has never been supposed that a general right of search grew out of this admitted right of seizure. On the contrary, it is the general understanding that the seizer visits, in such cases, at his peril, and is excused and justified, not by probable cause, but by the fact that the seizure is followed by a just condemnation.

"It appears to me, also, that every nation has the right to seize the property of its own offending subjects on the high seas, whenever it has become subject to forfeiture; and it cannot for a moment be admitted that the fact that the property is disguised under a foreign flag, or foreign papers, interposes a just bar to the exercise of that right. What, then, is to be done? If it be said that foreigners are not to be molested on the high seas, while engaged in their own innocent and lawful trade, it is no less true that foreigners engaged in the fraudulent cover of the property of your own subjects, and in concert with them, evading your own laws, are not to be protected in such illegal enterprises. In such a case you do not acquire a right of search which justifies your encroachment upon the private concerns of a foreign ship; but, nevertheless, having a right to seize for breach of your own laws, you may seize at your peril; and if the case turns out to be innocent, you are responsible for damages; if guilty, you are justified by the event. Unless such a community of right be conceded to exist for purposes like those alluded to, the ocean would become a sanctuary for all sorts of offences; and evils, at least as alarming as those with which we are threatened in this case, would afflict the whole commercial world. It is not lightly to be supposed that any nation would be inclined to abuse any right, which it holds in common only with all other nations; and if it should choose, in the wantonness of power, to abuse it to the serious injury of other nations, the same remedy would exist, and none other, as for like



oppressions practised within the range of its ordinary authority.

“ We know that the *lex loci* is often applied in Courts of Justice to enforce rights and redress wrongs ; and that contracts and titles, which cannot have a legal existence in the country where they have their origin, are held void everywhere.” (Pp. 438, 439, 440, 441, 450.)

Buron v. Denman, 2 Exch., 167, was a trial at Bar before Parke, Alderson, Rolfe, and Platt, B.B. The summing up of the Court was delivered by Parke, B., who said :—

“ The law on the subject of slaves has been settled by the case of ‘ Le Louis,’ which has been referred to. That case was decided in the year 1817, by Sir William Scott, who went fully into the question of the legality of the Slave Trade, and laid down certain positions which have since been acquiesced in both in this country and abroad. Those positions are, first, that dealers in slaves are not pirates by the law of nations, and can only be made so by and according to the terms of a Treaty with the country to which they belong prohibiting the Slave Trade; secondly, that trading in slaves is not a crime by the law of nations; thirdly, that the right of stopping and searching ships in time of peace is not a right which can belong to any nation except by contact with the nation to which such ships belong; and, fourthly, that if there be a law in a particular country prohibiting the Slave Trade, it is not open to every one to punish the offender against that law, but proceedings must be taken in the Tribunals of his own country.” (Pp. 186, 187.)

"Right of Visitation.—Question.

"*Lord Lyndhurst*, in rising to put the question of which he had given notice to the Secretary of State for Foreign Affairs with respect to the right of visit, said—Your Lordships, no doubt, have most of you read a speech which was made by Mr. Dallas, the American Minister, a short time since, at a meeting of his fellow-subjects, to celebrate the anniversary of American Independence. On that occasion the honourable gentleman stated that the question of the right of visiting American vessels in time of peace on the high seas had been finally settled. This is a subject, my Lords, of so much importance and such deep interest that it is material that we should receive a distinct and precise account of the terms on which that settlement is based; and I have therefore given notice of a question which I intend to propose to my noble friend the Secretary of State for Foreign Affairs, in order that he may give us some explanation on the subject to which I have referred. Many persons—perhaps I ought not to say 'many persons,' but several persons, and those in a high political position—appear to think that that proceeding was not justified, and that in point of fact we have surrendered a most valuable and important right. The answer which I make to that is, that we have surrendered no right, for that, in point of fact, no such right as that which is contended for has ever existed. We have, my Lords, abandoned the assumption of a right, and in doing so we have, I think, acted justly, prudently, and wisely. Now, my Lords, with your permission, I shall proceed to make a few observations upon the general question, and to refer to some of the most eminent authorities on the subject; but I assure you that I should not have troubled you were it not that I think it is of great importance that this question should be distinctly and finally understood and settled. The first proposition which I state is this: That in no writer on international law has that right ever been asserted; and, in the next place, that there is no decision of any Court of Justice having jurisdiction to decide such questions in which that right has been admitted. I wish, in making this assertion, to fortify myself by some authorities; and I cannot quote a higher or a better English authority than that of Lord Stowell, who states distinctly, in the words which I am about to read—in conformity with what I have stated—that no such right has ever been asserted by any competent authority. His words are these:—

"I can find no authority that gives the right of interruption to the navigation of States in amity upon the high seas excepting that which the rights of war give to both belligerents against neutrals."

"That
learned
Wheaton
law, who

"It is
institution
Court by
the exercise
peace, in

"So the
of the war
by the high
I have re
It has bec
side and
the other
assertion;
water ma
and distin
been able
which the
to the sam
this subje
states wil
says:—

"No n
search on
No such r
cised, with
the real a
right, whe
to all cou
further, it
which such

"I may
American
Marianna
same term
a coinciden
the questio
sponding
do not thin
of the que
principle o
with respo
high sens
Whether
imbecile, a
is the pos
ship is pa
belongs, a
interfere v
rights of
clear and a

"That is a distinct statement made by that noble and learned Lord. In addition, I beg leave to refer to Wheaton, the eminent American authority on international law, who states the proposition in these terms:—

"It is impossible to show a single passage in any institutional writer on public law, or the judgment of any Court by which that law is administered, which will justify the exercise of such a right on the high seas in time of peace, independent of special compact."

"So that your Lordships perceive that both on this side of the water and in America, by the best authorities and by the highest jurists, that right, in the passages to which I have referred, is controverted instead of being admitted. It has been agitated long between this country on the one side and America on the other. The eminent jurist on the other side of the water makes his statement and assertion; our corresponding authority on this side of the water makes his assertion; and those assertions directly and distinctly agree. For myself, my Lords, I have never been able to discover any principle of law or reason on which that right could be supported. I will refer again to the same high English authority—Lord Stowell—upon this subject, and you shall hear what he emphatically states with respect to it. That distinguished jurist says:—

"No nation can exercise the right of visitation and search on the high seas except on the belligerent claim. No such right has ever been claimed, nor can it be exercised, without the oppression of interrupting and harassing the real and lawful navigation of other countries, for the right, when it exists at all, is universal, and will extend to all countries. If I were to press the consideration further, it would be by stating the gigantic mischiefs which such a claim is likely to produce."

"I may add that another very high authority—the American Judge Story—in the well-known case of the *Marianna Flora*, expressed the same opinion in almost the same terms, and in language as emphatic. So here again is a coincidence of authority between the two parties agitating the question—the authority on this side of the water corresponding exactly with the authority on the other. But I do not think it necessary to refer to any cases in support of the question I am considering; I will refer only to the principle on which the question rests. What is the rule with respect to the high seas and to the navigation of the high seas? All nations are equal upon the high seas? Whether they be strong and powerful, or weak and imbecile, all are on a footing of perfect equality. What is the position of a merchant ship on the high seas? A ship is part of the dominion of the country to which she belongs, and what right has the ship of one nation to interfere with the ship of any other nation, where the rights of both parties are equal? The principle is so clear and so distinct that it will not admit of the smallest



doubt. I am unwilling on a question of this kind to refer to any arguments of my own, or to any authority which I can possess on the subject; but hear what is said by Lord Stowell with respect to the navigation of the high seas. His language is this:—

“All nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all States meet on a footing of entire equality and independence, no one State or any of its subjects has a right to assume or exercise authority over the subjects of another.”

“That is a confirmation of the doctrine which I have stated, that the principle on which this question is to be decided is the equality of all nations on the high seas. Admitting this principle, how can it be asserted that the ships of one nation can interfere in any way with the vessels of another? Then, having laid down this principle, the consideration next occurs that difficulties may arise out of frauds which may be practised on the high seas; and it is said that the flag of America may be assumed by another Power to cover the basest of purposes. But how can the act of a third Power, or of the subjects of a third Power, by possibility affect any right existing on the part of the United States? Take this case: By our Treaty with Spain we have a right to visit and search Spanish vessels with a view to prevent the Slave Trade. But how can that agreement between us and Spain by any possibility affect the rights of America? Clearly in no way at all. But, then, what are our cruisers to do? They are placed in a most difficult position, because it is quite clear and plain if one of our cruisers see a vessel bearing the American flag, and have reason to believe that that flag is assumed, he must examine and inquire into her right to carry that flag as best he can. If the result should be to give him a strong suspicion that the vessel has no right to the flag that she bears, he may certainly visit her and have an examination of her papers, and if he then find that his suspicions are correct he may deal with her in the manner in which he would be justified in dealing with her according to the relations existing between England and the country to which she belongs. The American Government has no right to interfere in this case. The matter is entirely between the English cruiser and the vessel seized. But, if it should turn out that the vessel is an American, and has a right to use the flag suspected, the situation is this—he must of course apologize for his acts and make ample compensation for any injury done. That is exactly the position in which the two countries are placed. The American Minister for Foreign Affairs thus states the case of the United States. He says:—

“If a Police Magistrate gives a warrant to a police officer to seize a particular person, the officer, if he does not know the person, will make inquiries before he ventures to execute the warrant, and should the result of

his inquiry
he will ex
correct, hi
that he ha
he must r
he has don

"The t
A distinct
I think th
and the ri
which are
internatio
single tex
What is t
can a men
to obtain
of the pap
visit beco
vessel for
a right co
suppose a
what right
to visit it
principle
have bee
countries
such Treas
founded
year 181
applied
mutual s
either co
France w
establish
belongin
far enoug
that ther
Whatever
America
we ever
adopt sc
the flag,
countries
correspo
question
terminat
beginnin
prudent
To prose
with lav
lead to
would
ceeding
injustic
honoura
before,

his inquiries satisfy him as to the identity of the individual, he will execute the warrant. If his information turn out correct, his proceedings are correct also; but if it turn out that he has made a mistake and arrested the wrong man, he must make ample compensation for the injury which he has done.'

"The two cases seem to me to be perfectly analogous. A distinction has been attempted to be drawn—for which I think there is no foundation—between the right of visit and the right of search. Visit and search are two words which are always placed together in our vocabulary of international law, but they express what is conveyed by a single term in foreign vocabularies, 'le droit de visite.' What is the use of visiting if you can do nothing? How can a mere visit convey the information which you desire to obtain?—and the moment you call for an examination of the papers—the moment you ask a single question the visit becomes a search—so that the visit to a particular vessel for the purpose of inquiry is in effect the exercise of a right comprehended in the words 'droit de visite.' But suppose a party visits only in the strict sense of the word, what right, I ask, has any person to go on board a vessel to visit it without the consent of the master? The same principle applies that I have just laid down. Treaties have been entered into between England and foreign countries giving the right of visit. But why enter into such Treaties if the right of visiting is a national right founded on international law? What took place in the year 1815 after the Treaty of Vienna? Lord Castlereagh applied to the French Government to establish some mutual system by which cruisers could visit the vessels of either country; but the Duc de Richelieu replied that France would never consent to a maritime police being established over her own subjects, except by persons belonging to her own country. I think I have now gone far enough to establish the position with which I started—that there is, in truth, no such thing as the right of visit. Whatever arrangement may have been made with the American Government, we have renounced no right that we ever possessed. It would be material, if possible, to adopt some plan by mutual understanding for verifying the flag, yet maintaining the integrity of the rights of both countries. I am told that some negotiation and some correspondence is going on for that end. It is a difficult question, and I hope it may be brought to a favourable termination. I conclude with what I stated at the beginning, that Her Majesty's Government were wise, prudent, and just in the course which they have pursued. To prosecute a claim which you cannot enforce consistently with law, or to make an attempt to enforce it which must lead to resistance, and which may afterwards lead to war, would be a most unwise and imprudent mode of proceeding. No war is so deplorable as a war founded on injustice. Before sitting down, I must, in justice to the honourable gentleman to whose statement I referred before, read to your Lordships the concluding words of his

speech, because it is in complete accordance with the high character which he has always borne both in America and in this country where he acts as her Representative. The honourable gentleman said :—

“ While I am able to announce to you this gratifying fact, I think it should be accompanied also by the assurance that the termination of that for which we have struggled for nearly half a century has been brought about with a degree of honourable candour and fair dealing on the part of the British Government deserving of every acknowledgment on our part.’

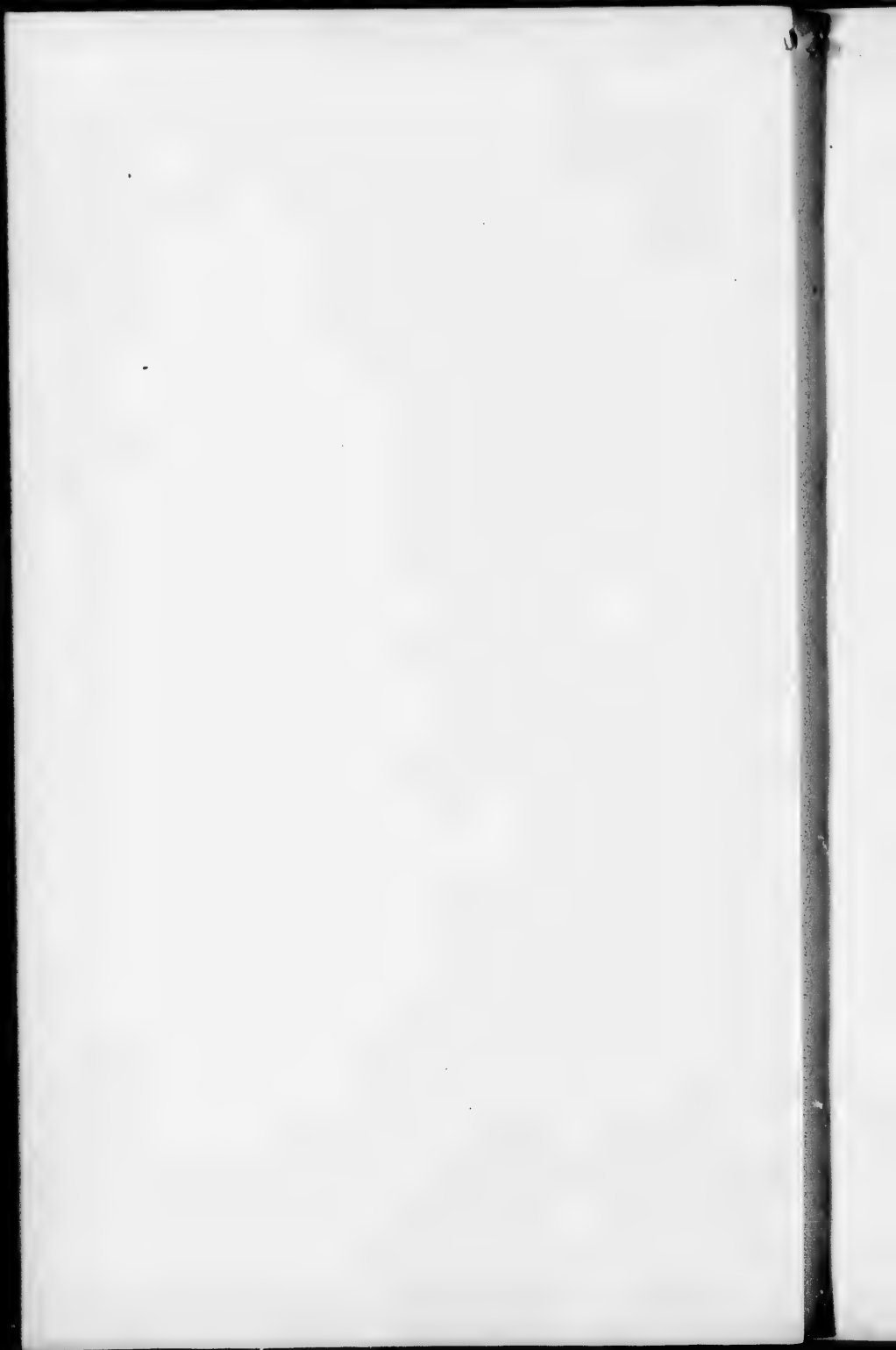
“ That statement is in perfect unison with the excellent character of the honourable gentleman to whom I have referred. My Lords, I thought it my duty to make these observations, and to bring this matter clearly before you, accompanied by the quotations which I have read—with which, no doubt, many of your Lordships are perfectly familiar—in order to afford an opportunity to any noble Lord to refute the positions which I have laid down if they are capable of refutation. The question which I wish to put to my noble friend the Foreign Secretary is this—whether he is prepared to lay on the table of the House the correspondence with the American Government with respect to the right of visitation ?

“ *The Earl of Malmesbury.*—My Lords, I have to thank my noble and learned friend for having come forward, and, as I may say, made the occasion himself whereby he has given us an opportunity of hearing his opinion upon this very important subject. I think, my Lords, that that opinion must be of immense consequence and value both in Europe and in America when it becomes fully known. Indeed, I feel I may say that that opinion must finally settle the disputed point; and that if ever a similar question should be again mooted, the opinion just expressed by my noble and learned friend must be quoted with as great weight as my noble and learned friend has quoted the authority of his great predecessor, Lord Stowell. It is with great pleasure that we have heard the views of my noble and learned friend on this important subject, because they conform precisely to the opinion of the Law Officers of the Crown, whom we thought it our duty to consult before we sent any answer to the communications we received from the American Government. When we received General Cass' communication, which was addressed to Her Majesty's Government, we immediately consulted the Law Officers of the Crown, and they unanimously asserted that the international law in relation to this question was precisely as it has been just described by my noble and learned friend. Upon that opinion Her Majesty's Government at once acted, and we frankly confessed that we have no legal claim to the right of visit and of search which has hitherto been assumed. Her Majesty's Government therefore abandoned both those claims, but at the same time they placed before the American Government the paramount necessity of agreeing upon the adoption of some instructions perfectly

identical in
officers of
the officers
should be
tion to com
use of nat
such instr
quarrels ar
The negoti
up, as I h
American
communic
Her Majes
to consider
the view to
have, my l
the same
France. T
spirit, and
appreciate
Lords, the
any propo
suggest up
consider to
in view.
merce gen
present tin
ships of a
there can
some sort
national fi
not proceed
of negotia
the subject
no objecti
the corres
Your Lord
further th
search an
have agree
may make
the flags
ment are
to attain t
" *The E*
when for
great man
than will
Malmesbu
placo left
and, there
anything
of the A
and 1843
the Ame
myself, a
the late

identical in character to be placed in the hands of the officers of both Governments, and, indeed, in the hands of the officers of all maritime nations, by which all Powers should be ruled, so as for the future to avoid all obstruction to commerce, while at the same time the fraudulent use of national flags may be prevented. At all events, such instruction as would have the effect of saving us from quarrels arising out of the assertion of an assumed right. The negotiations have gone on thus far. Having given up, as I have said, the right of visit and of search, the American Government on their part have received our communications with equal frankness, and have stated to Her Majesty's Government they are ready to listen to and to consider any suggestions we may make to them with the view to the verification of the international flags. We have, my Lords, gone further than that, for we have made the same suggestions and offer to the Government of France. That Government has answered us in the same spirit, and in a manner which showed that they entirely appreciated the great importance of the question. My Lords, the Government of France have agreed to consider any proposition we shall make on the subject, and to suggest upon their part any proposition which they may consider to be useful or conducive to the ends we have all in view. Considering the enormous dimensions that commerce generally has assumed throughout the world at the present time—seeing as we do the sea covered with the ships of all nations—I say, my Lords, I do not think there can be any doubt of the necessity of establishing some sort of security against the fraudulent use of the national flags. Further than this our negotiations have not proceeded. Although it is most unusual in the midst of negotiations to produce any of the correspondence on the subject, nevertheless Her Majesty's Government have no objection whatever to place in your Lordships' hands the correspondence that has taken place as far as it goes. Your Lordships will understand that we have gone no further than this—that we have abandoned the right of search and visit; and that the American Government have agreed to entertain and to consider any suggestion we may make to give security against the fraudulent use of the flags of either nation; and that the French Government are ready and anxious to assist us in our endeavours to attain the same object.

"The Earl of Aberdeen.—My Lords, it happened to me, when formerly at the Foreign Office, to have to write a great many despatches upon this subject—more, I hope, than will ever fall to the lot of the noble Earl (the Earl of Malmesbury). But the correspondence which then took place left the question, as I supposed, completely settled, and, therefore, it was with great astonishment I heard of anything which could give rise to complaint on the part of the American Government. It was in the years 1842 and 1843 that a long correspondence took place between the American Minister of that time (Mr. Webster) and myself, and Mr. Webster declared over and over again to the late Lord Ashburton that the matter was perfectly



and satisfactorily settled. The noble Earl talks of referring to the Law Officers of the Crown as if this were a new question. The instructions under which our officers acted—and I suppose they are the same instructions now—were drawn up under the supervision of Dr. Lushington, Sir George Cockburn, and the Admiralty authorities of the day. They were communicated to Mr. Everett, the American Minister, and I never heard a word intimated against them. I was therefore astonished to hear my noble and learned friend (Lord Lyndhurst) quote the statement of the highly respected American Minister who is now in this country, to the effect that we had given up frankly and finally the right of visit and search. Twenty years ago the Government of that day repudiated the assertion of any such right, and therefore what the noble Earl the Secretary of State for Foreign Affairs can have given up I am at a loss to understand. Any such right was given up then as frankly and finally as it possibly can be given up at this moment. After my noble and learned friend's quoting the high authority of Lord Stowell, it may appear ludicrous in me to quote myself. At the same time, in order to show how the matter stood twenty years ago, I will just quote a note of my own. Though an humble authority, still I was speaking the language of the British Government, and that language was received by the American Government with acquiescence and satisfaction. My words were these:—

“The Undersigned resigns all pretensions on the part of the British Government to visit and search American vessels in time of peace; nor is it as American vessels that such vessels are ever visited. But it has been the invariable practice of the British navy, and, the Undersigned believes, of all navies in the world, to ascertain by visit the real nationality of merchant-vessels met on the high seas, if there were good reason to apprehend their illegal character. In certain latitudes, and for particular objects, vessels are visited not as American, but either as British vessels engaged in an unlawful traffic and assuming the American flag for criminal purposes, or as belonging to States which have by Treaty conceded to Great Britain the right of search, and which right it is attempted to defeat by fraudulently bearing the protective flag of the Union; or, finally, they are visited as piratical outlaws, having not the least title to any flag or any nationality whatever.”

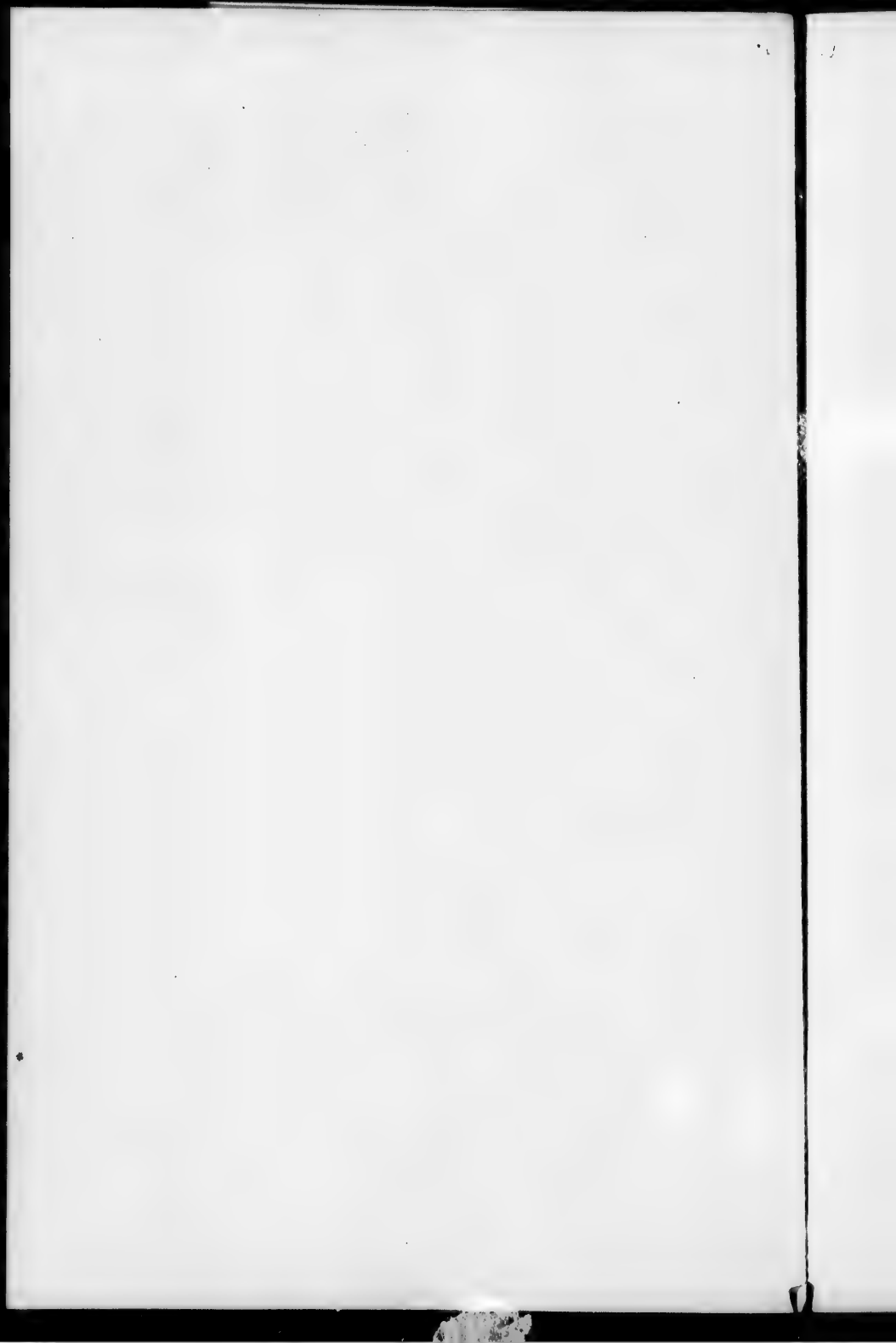
“Under those three categories we have exercised the right to visit vessels so suspected. But, if our officers knew that an American vessel was full of slaves, they would have no right whatever to visit or arrest her, unless they had good ground to suspect that she was not an American vessel. No doubt the flag is *prima facie* evidence of nationality; but the flag alone is not sufficient evidence, and is not sufficient to outweigh information to the contrary received from any quarter, or any other grounds of reasonable suspicion. No doubt our cruisers may commit a mistake and overhaul an American vessel, believing her to be a Spaniard or a

pirate.
instant r
involunt
between
I saw so
Cass, wh
fairness,
As I ha
subject
Earl to
perfect
years un
British
our cru
Cuba, in
Africa,
visit, an
verted
an exce
Americ
is only
British
vessel
asserted
Her M
finally,
with gr
to und
repudiat
made a
give it
Foreign
should
the occ
ever.
framed
had th
at the
Secret
instru
careful
notwith
wheth
the n
him, b
that
deal
allude
more
more
furth
I wro

the l
more
of S
Was

pirate. But it has been found over and over again that instant and ample reparation has been offered for such an involuntary error, and that is all that can be expected between two nations acting in good faith with each other. I saw some time ago an extract from a despatch of General Cass, which appeared to me to state the case with perfect fairness, and they are the very words which I used myself. As I have said already, I have written more upon this subject than I hope it will ever be necessary for the noble Earl to write, and the result of that writing has been perfect content and tranquillity for sixteen or eighteen years until this year, when we hear for the first time of British outrages. I believe it has arisen from the zeal of our cruisers. The addition of a squadron on the coast of Cuba, instead of operations being confined to the coast of Africa, has led to a more frequent exercise of the right of visit, and I am afraid the zeal of our cruisers has converted into a rule that which was only intended to be an exception. Without any ground of suspicion, the American flag is sufficient evidence of nationality, and it is only when there are grounds of suspicion that the British cruiser is entitled to see whether the suspected vessel is American or not. That is all that ever was asserted by us; and when the American Minister declares Her Majesty's Government have given up, frankly and finally, the right of visit—a declaration which is received with great enthusiasm by his countrymen—I am at a loss to understand what is given up. Twenty years ago we repudiated the existence of such a right. We never made assertion of any such right, and therefore we cannot give it up. But the noble Earl the Secretary of State for Foreign Affairs added, that it is important some mode should be taken to verify the nationality of any vessel on the ocean, without which we can have no security whatever. The instructions to which I have referred were framed in the most careful and cautious manner, and we had the advantage of the assistance of the noble Earl now at the head of the Government. If the noble Earl the Secretary of State can make any regulations, or issue any instructions, which shall be more effectually and more carefully guarded, I shall be very glad to see them; but, notwithstanding the desirableness of the object, I doubt whether he will find it practicable. I do not complain of the noble Earl, because the subject was probably new to him, but those who advised him ought to have recollected that this subject occupied, during many months, a great deal of public attention. At the time to which I allude, the question was at its height. It excited much more interest than it does now, and it assumed a much more serious character. I will not follow this subject further, but I will read an extract from the last despatch I wrote on this matter:—

“ I have no intention to renew the discussion, and it is the less necessary because my last note has remained for more than four years without an answer, and the Secretary of State has declared to the British Legation at Washington that the explanations given were entirely



satisfactory. The President is assured and believes that Great Britain will always respect the just claims of the United States. We have no pretensions to interfere in any manner, either by detention, visitation, or search, with vessels of the United States, known or believed to be such. But we still maintain and will exercise the right and necessity of ascertaining the genuineness of any flag that suspected vessels may carry. If, in the exercise of this right, any involuntary error should be made; if, in spite of every precaution, any loss or injury should be sustained, prompt reparation will be afforded; but that we should abandon the right itself is quite impossible.'

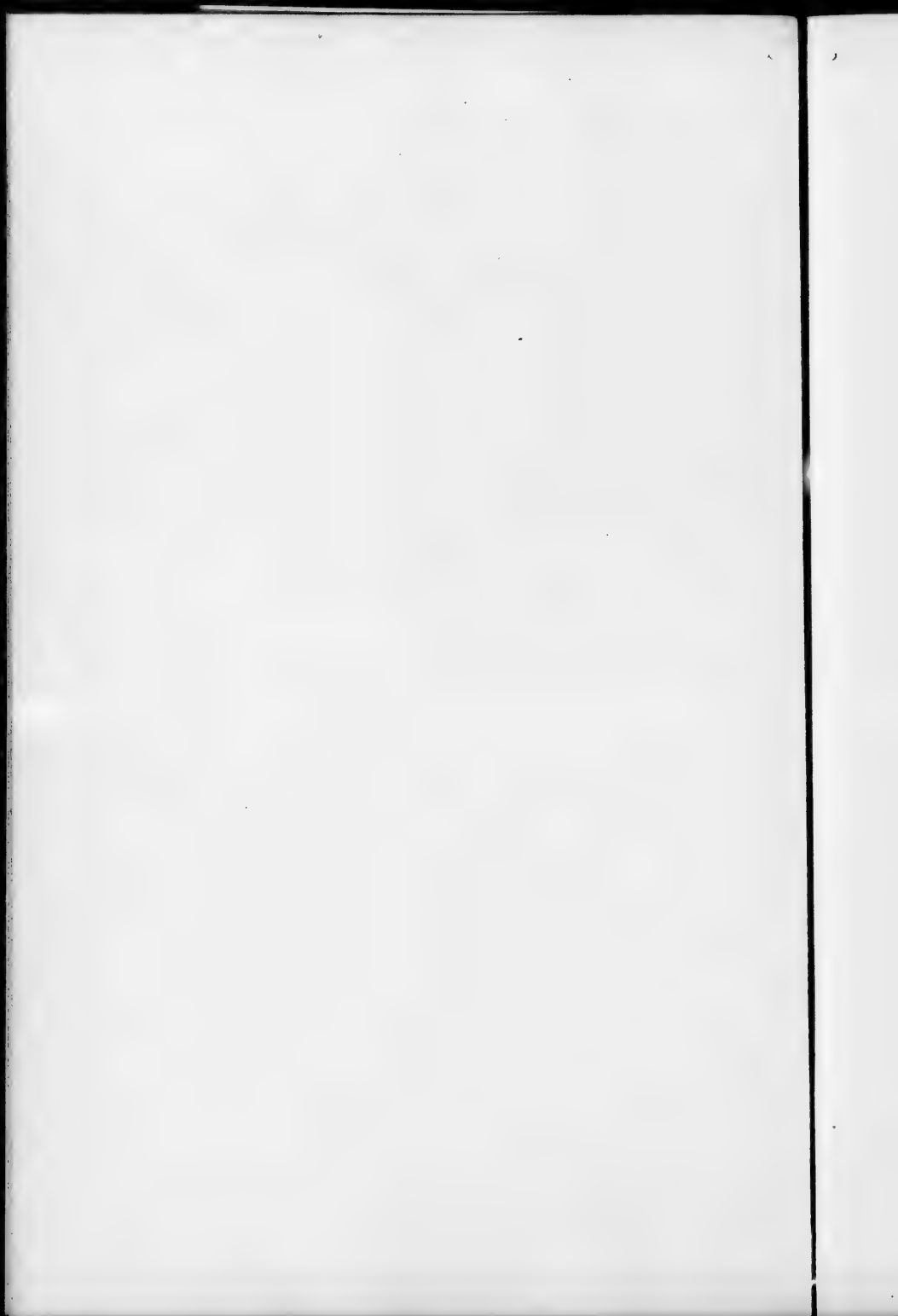
"That is the footing of common sense and common justice on which the question stands at this moment, and I was much pleased to see from the despatch of General Cass that he adopted the same opinion, and that he made the same statement and used the words which I myself employed. The exercise of our right, if it be cautiously and prudently asserted, as it has been for the last sixteen or eighteen years, will not leave us in a very bad position if no change is made. If, however, the noble Earl can improve the system which has prevailed during that time I can have no objection.

"*Earl Granville.*—I never heard that the state of the law as laid down by my noble and learned friend had been questioned, nor am I aware that any complaint was made against the late Government for the instructions issued by them. No alteration in these instructions was made by the late Government, and I wish to know whether it is the intention of the noble Earl to abide by the instructions which have heretofore been acted upon until the communications with the American Government on this subject have been concluded. The case to be provided for is that of a vessel belonging to a nation which has conceded the right of search to Great Britain by Treaty assuming the American flag for fraudulent purposes; and I wish to know whether the Government intend to maintain the existing instructions.

"*The Earl of Malmesbury.*—The noble Earl (the Earl of Aberdeen) omitted to mention one very important matter. No doubt the noble Earl and the Ministry with which he was connected assumed that the law was such as it has been laid down by my noble and learned friend; but he did not say that the American Government invariably went further, and asserted that they had a right to maintain their own police, and that whatever might be on board a vessel, if the American flag were flying, we had no right to visit it. They said that they constantly carried out a visitation by their own police, and that they would not be meddled with by any other country. Then came the question of discretion. I admit that lately—I know not by whose orders—there has appeared to be an increased activity exhibited by our cruisers in searching American vessels. There can be no doubt that the accounts given to the American Government have been immensely exaggerated, and I may state that, after a careful examination,

I have no
behaved
American
same time
discretion
of the no
some case
there was
Slave Tru
have alte
remain p
are so sa
might be
of makin
national
such as
occupy.
out, that
vessels, t
vessels, a
French v
heretofor
them un
have also
America
on their
on the
inactivit
to use a
flag, wh
may no
Trude."

I have not found any instance in which our cruisers have behaved even with incivility to the officers of any American vessel which they have boarded; but at the same time I must admit that in the exercise of that discretion which is given to them under the instructions of the noble Earl there has been a want of judgment in some cases, and that our officers have visited vessels which there was no fair reason to suppose were engaged in the Slave Trade. The noble Earl has asked me whether I have altered those instructions. I have not done so. They remain precisely as they were; but I do not think they are so safely worded as they might be, and I think they might be improved so as not to expose our officers to the risk of making mistakes which amount to an infraction of international law, and which place them in an unfair position such as no officers, and especially young officers, ought to occupy. Pending the arrangement which I have sketched out, that English cruisers should search suspected English vessels, that Americans should search suspected American vessels, and that French cruisers should search suspected French vessels, without actually altering the instructions heretofore acted upon, we have thought it right to suspend them until the negotiations have proceeded further. We have also ordered our cruisers on that coast to respect the American flag under any circumstances. The Americans, on their part, have added a considerable number of cruisers on the coast, and have promised, during this period of inactivity on our part—which, I trust, may be but short—to use all the activity they can in order that the American flag, which, I fear, has been several times used by alavers, may not be prostituted to the purposes of the Slave Trade."



Wheaton's "International Law," edited by
Dana, s. 179, 8th edition :—

"It appears from Sir Leoline Jenkins that both in the reigns of James I and Charles II the security of British commerce was provided for by express prohibitions against the roving or hovering of foreign ships of war so near the neutral coasts and harbours of Great Britain as to disturb or threaten vessels homeward or outward bound ; and that captures by such foreign cruizers even of their enemy's vessels would be restored by the Court of Admiralty, if made within the King's Chambers. So also the British 'Hovering Act,' passed in 1736 (9 Geo. II, cap. 35), assumes, for certain revenue purposes, a jurisdiction of 4 leagues from the coasts, by prohibiting foreign goods to be transhipped within that distance without payment of duties. A similar provision is contained in the Revenue Laws of the United States ; and both these provisions have been declared by judicial authority in each country to be consistent with the law and usage of nations."^a

"108. *Municipal Seizures beyond the Marine League or Cannon-shot.*—The statement in the text requires further consideration. It has been seen that the consent of nations extends the territory of a State to a marine league or cannon-shot from the coast. Acts done within this distance are within the sovereign territory. The war right of visit and search extends over the whole sea. But it will not be found that any consent of nations can be shown in favour of extending what may be strictly called territoriality, for any purpose whatever, beyond the marine league or cannon-shot. Doubtless States have made laws, for revenue purposes, touching acts done beyond territorial waters ; but it will not be found that, in later times, the right to make seizures beyond such waters has been insisted upon against the remonstrance of foreign States, or that a clear and unequivocal judicial precedent now stands sustaining such seizures, when the question of jurisdiction has been presented. The Revenue Laws of the United States, for instance, provide that if a vessel bound to a port in the United States shall, except for necessity, unload cargo within 4 leagues of the coast, and before coming to the proper port for entry and unloading, and receiving permission to do so, the cargo is forfeit, and the master incurs a penalty (Act of the 2nd March, 1797, § 27) ;

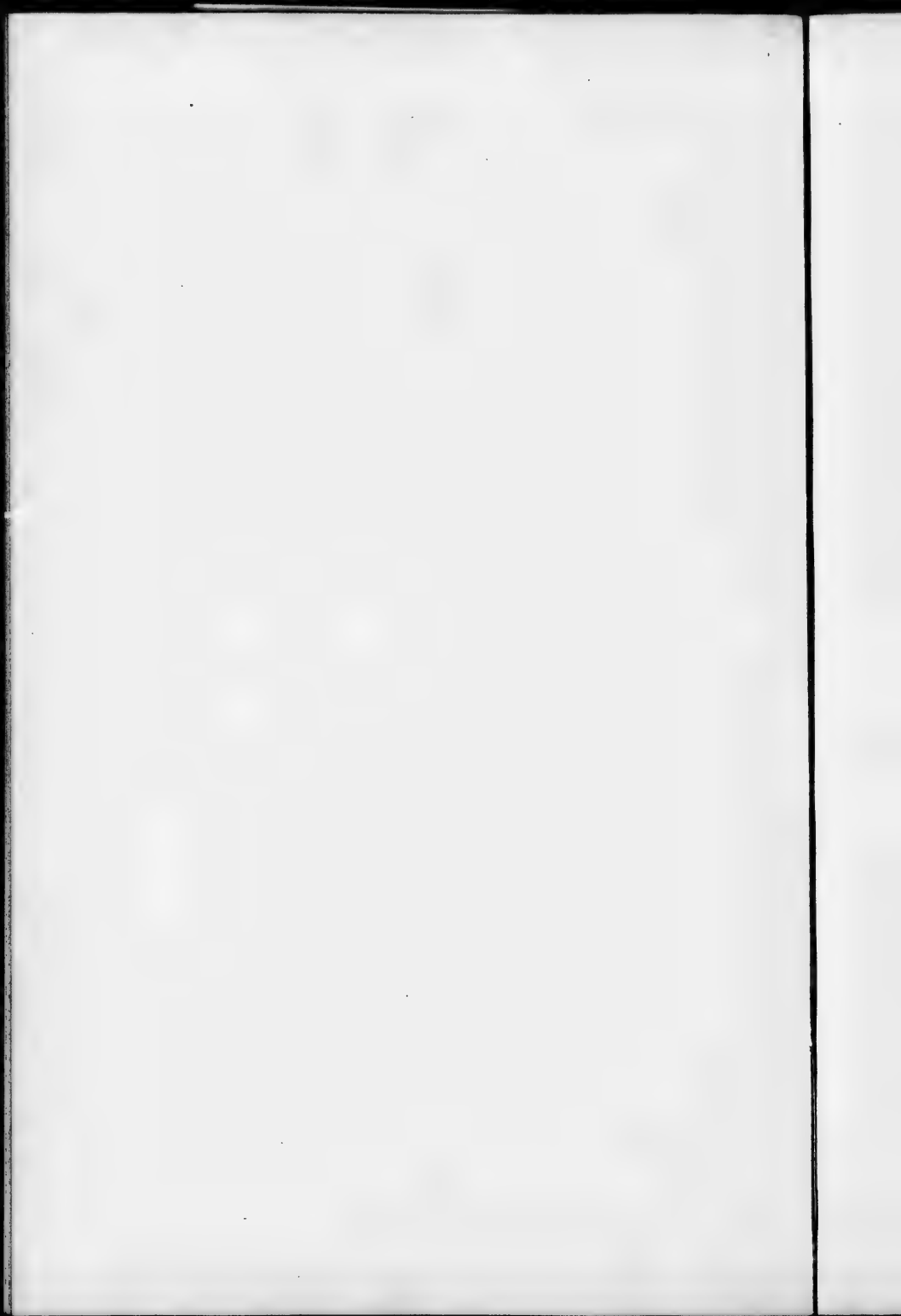
^a "Life and Works of Sir L. Jenkins," ii, 737, 728, 780 ; Opinion of the United States' Attorney-General on the capture of the British ship "Grange" in the Delaware Bay, 1793 ; Walpole's American State Papers, i, 75 ; Dodson's Admiralty Reports, ii, 245 ; "Le Louis," Cranch's Reports, ii, 187 ; Church v. Hubbard ; Vattel, "Droit des Gens," Liv. I, chap. 23, sec. 231.

but the S
vessel wh
Statute m
vessel, con
violation
jurisdiction
that, to c
vessel sh
territory
The act
part of an
jurisdiction
is made t
for the pu
of the co
seized on
their Gov
because t
the partic

" The
and stric
' Louis '
because
law beyon
Scott, on
Acts, ar
neighbour
even as
purposes
On the
defensiv
league, a
United
visitation
ocean ;
on the l
to Swed
consiste
visitatio
was fin
187) w
there w
Portug
the ves
within
the m
arreste
anchor
for the
necessar
begun,
the pr
Justic
itself
made
nation
expect

but the Statute does not authorize a seizure of a foreign vessel when beyond the territorial jurisdiction. The Statute may well be construed to mean only that a foreign vessel, coming to a American port, and there seized for a violation of Revenue Regulations committed out of the jurisdiction of the United States, may be confiscated; but that, to complete the forfeiture, it is essential that the vessel shall be bound to, and shall come within, the territory of the United States, after the prohibited act. The act done beyond the jurisdiction is assumed to be part of an attempt to violate the Revenue Laws within the jurisdiction. Under the previous sections of that Act, it is made the duty of revenue officers to board all vessels, for the purpose of examining their papers, within 4 leagues of the coast. If foreign vessels have been boarded and seized on the high sea, and have been adjudged guilty, and their Governments have not objected, it is probably either because they were not appealed to, or have acquiesced, in the particular instance, from motives of comity.

"The cases cited in the author's note do not necessarily and strictly sustain the position taken in the text. In the 'Louis' (Dodson, ii, 245) the arrest was held unjustified, because made in time of peace for a violation of municipal law beyond territorial waters. The words of Sir William Scott, on pp. 245 and 246, with reference to the Hovering Acts, are only illustrative of the admitted rule, that neighbouring waters are territorial; and he does not say, even as an *obiter dictum*, that the territory for revenue purposes extends beyond that claimed for other purposes. On the contrary, he says that an inquiry for fiscal or defensive purposes near the coast, but beyond the marine league, as under the Hovering Laws of Great Britain and the United States, 'has nothing in common with the right of visitation and search upon the unappropriated parts of the ocean;' and adds, 'a recent Swedish claim of examination on the high seas, though confined to foreign ships bound to Swedish ports, and accompanied, in a manner not very consistent or intelligible, with a disclaimer of all rights of visitation, was resisted by the British Government, and was finally withdrawn.' Church v. Hubbard (Cranch, ii, 187) was an action on a policy of insurance, in which there was an exception of risks of illicit trade with the Portuguese. The voyage was for such an illicit trade, and the vessel, in pursuance of that purpose, came to anchor within about 4 leagues of the Portuguese coast; and the master went on shore on business, where he was arrested, and the vessel was afterwards seized at her anchorage and condemned. The owner sought to recover for the condemnation. The Court held that it was not necessary for the defendants to prove an illicit trade begun, but only that the risks excluded were incurred by the prosecution of such a voyage. It is true that Chief Justice Marshall admitted the right of a nation to secure itself against intended violations of its laws by seizures made within reasonable limits, as to which, he said, nations must exercise comity and concession, and the exact extent of which was not settled; and in the case



before the Court, the 4 leagues were not treated as rendering the seizure illegal. This remark must now be treated as an unwarranted admission. The result of the decision is, that the Court did not undertake to pronounce judicially in a suit on a private contract; that a seizure of an American vessel, made at 4 leagues, by a foreign Power, was void and a mere trespass. In the subsequent case of *Rose v. Hinnely* (Cranch, iv, 241), where a vessel was seized 10 leagues from the French coast, and taken to a Spanish port, and condemned in a French Tribunal under municipal and not belligerent law, the Court held that any seizures for municipal purposes beyond the territory of the Sovereign are invalid; assuming, perhaps, that 10 leagues must be beyond the territorial limits for all purposes. In *Hudson v. Quertier* (Cranch, iv, 293), where it was agreed that the seizure was municipal, and was made within a league of the French coast, the majority of the Court held that the jurisdiction to make a decree of forfeiture was not lost by the fact that the vessel was never taken into a French port, if possession of her was retained, though in a foreign port.

"The judgment being set aside and a new trial ordered, the case came up again, and is reported in Cranch, vi, 281. At the new trial the place of seizure was disputed, and the Judge instructed the jury that a municipal seizure made within 6 leagues of the French coast was valid, and gave a good title to the defendant. The jury found a general verdict for the defendant, and exceptions were taken to the instructions. The Supreme Court sustained the verdict, not, however, upon the ground that a municipal seizure made at 6 leagues from the coast was valid, but on the ground that the French decree of condemnation must be considered as settling the facts involved; and if a seizure within a less distance from shore was necessary to jurisdiction, the decree may have determined the fact accordingly; and the verdict in the Circuit Court did not disclose the opinion of the jury on that point. The Judges differed in stating the principle of this case and of *Rose v. Hinnely*; and the report leaves the difference somewhat obscure.

"This subject was discussed incidentally in the case of the 'Cagliari,' which was a seizure on the high seas, not for violation of Revenue Laws, but on a claim somewhat mixed of piracy and war. In the opinion given by Dr. Twiss to the Sardinian Government in that case, the learned writer refers to what has sometimes been treated as an exceptional right of search and seizure, for revenue purposes, beyond the marine league; and says that no such exception can be sustained as a right. He adds: 'In ordinary cases, indeed, where a merchant-ship has been seized on the high seas, the sovereign whose flag has been violated waives his privilege, considering the offending ship to have acted with *mala fides* towards the other State, with which he is in amity, and to have consequently forfeited any just claim to his protection.' He considers the Revenue Regulations of many States, authorizing visit and seizure beyond their waters, to be enforceable at the

peril of
permis-

" It
municipal
territory
waters
cannon
either
beyond
there
objects
is depe
if fixe
the ear
where
later t
politic
territor
vessels
258, 2

peril of such States, and to rest on the express or tacit permission of the States whose vessels may be seized.

"It may be said that the principle is settled that municipal seizures cannot be made for any purpose beyond territorial waters. It is also settled that the limit of these waters is, in the absence of Treaty, the marine league or the cannon-shot. It cannot now be successfully maintained either that municipal visits and search may be made beyond the territorial waters for special purposes, or that there are different bounds of that territory for different objects. But as the line of territorial waters, if not fixed, is dependent on the unsettled range of artillery fire, and if fixed, must be by an arbitrary measure, the Courts, in the earlier cases, were not strict as to standards of distance where no foreign Powers intervened in the causes. In later times, it is safe to infer that judicial, as well as political, Tribunals will insist on one line of marine territorial jurisdiction for the exercise of force on foreign vessels, in time of peace, for all purposes alike." (Pp. 257, 258, 259, 260.)

Phillimore's "International Law" (2nd edition),
vol. i, Chapter X. Self-preservation :—

"CCX. The right of self-preservation, by that defence which prevents, as well as that which repels, attack is the next international right which presents itself for discussion, and which, it will be seen, may under certain circumstances, and to a certain extent, modify the right of territorial inviolability.

"CCXI. The right of self-preservation is the first law of nations, as it is of individuals. A society which is not in a condition to repel aggression from without is wanting in its principal duty to the members of which it is composed, and to the chief end of its institution.

"All means which do not affect the independence of other nations are lawful for this end. No nation has a right to prescribe to another what these means shall be, or to require any account of her conduct in this respect.

"CCXII. The means by which a nation usually provides for her safety are :—

"1. By alliances with other States ;

"2. By maintaining a military and naval force ; and

"3. By erecting fortifications and taking measures of the like kind within her own dominions.

"Her full liberty in this respect cannot, as a general principle of international law, be too boldly announced or too firmly maintained, though some modification of it appears to flow from the equal and corresponding rights of other nations, or at least to be required for the sake of the general welfare and peace of the world.

"CCXIII. Armaments suddenly increased to an extraordinary amount are calculated to alarm other nations, whose liberty they appear, more or less, according to the circumstances of the case, to menace.

"It has been usual, therefore, to require and receive amicable explanations of such warlike preparations ; the answer will, of course, much depend upon the tone and spirit of the requisition.

"Thus, the British Secretary for Foreign Affairs (Lord Grenville), in 1793, replied to M. Chauvelin (who had been the accredited Minister of the King of France, and remained in England after the Republic was declared) : ' It is added that if these explanations should appear to us unsatisfactory ; if you are again obliged to hear the language of haughtiness ; if hostile preparations are continued in the ports of England, after having exhausted everything which could lead to peace, you will dispose yourselves to war.

" ' If this notification, or that which related to the Treaty of Commerce, had been made to me in a regular and official form, I should have found myself obliged to answer

that a th
she think
declaration
has adopt
nature as
could nei
than that
would pre

"CCXI
a nation
safety, wi
the same
cautionar
transgresses
For inter
tion as p
bility, an
of the for

"The
pomeridie
Such a o
or a civil
while the
of rebels
protection
with rest
invasions
The inv
whether
Executiv
remains

"In tl
by inter
the nece
capture
their str
require.

"CCX

"Il es
ennemis
faibles
et d'épie
terres.
mes int
done q
charité
il doit l
souffrir
nouveau
dans ses
pas en
guerre
s'y bat,

"CC
that wl
except

that a threat of declaring war against England because she thinks proper to augment her forces, as well as a declaration of breaking a solemn Treaty, because England has adopted for her own security precautions of the same nature as those which are already established in France, could neither of them be considered in any other light than that of new offences, which, while they subsisted, would preclude all negotiation.'

"CCXIV. We have hitherto considered what measures a nation is entitled to take, for the preservation of her safety, *within* her own dominions. It may happen that the same right may warrant her in extending precautionary measures *without* these limits, and even in transgressing the borders of her neighbour's territory. For international law considers the right of self-preservation as prior and paramount to that of territorial inviolability, and, where they conflict, justifies the maintenance of the former at the expense of the latter right.

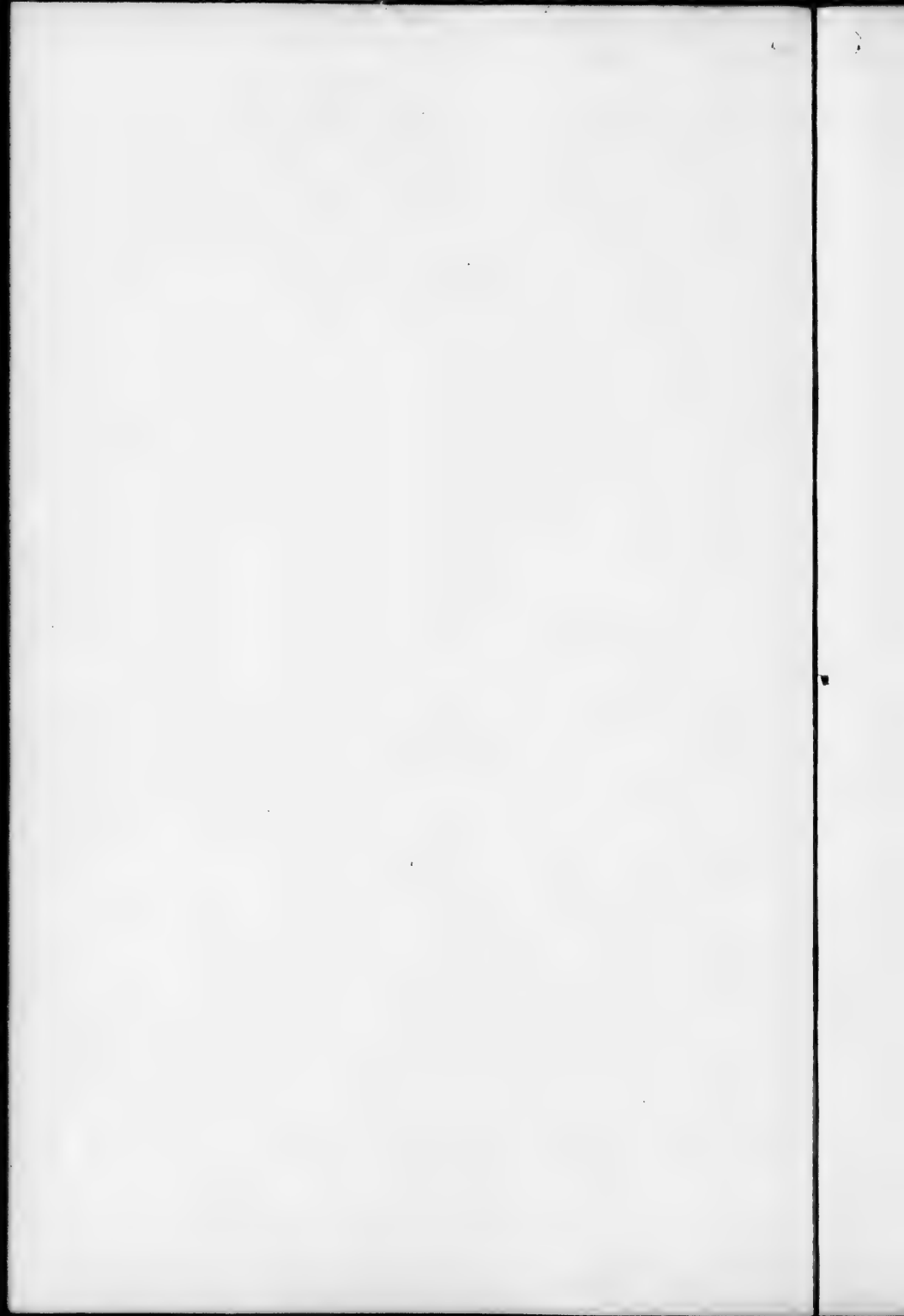
"The case of conflict indeed must be indisputable,—*pomeridiana luce clarior*, in the language of canonists. Such a case, however, is quite conceivable. A rebellion, or a civil commotion, it may happen, agitates a nation; while the authorities are engaged in repressing it, bands of rebels pass the frontier, shelter themselves under the protection of the conterminous State, and from thence, with restored strength and fresh appliances, renew their invasions upon the State from which they have escaped. The invaded State remonstrates. The remonstrance, whether from favour to the rebels or feebleness of the Executive, is unheeded, or, at least, the evil complained of remains unredressed.

"In this state of things the invaded State is warranted by international law in crossing the frontier, and in taking the necessary means for her safety, whether these be the capture or dispersion of the rebels, or the destruction of their stronghold, as the exigencies of the case may fairly require.

"CCXV. Vattel maintains strongly this opinion:—

"*Il est certain que si mon voisin donnait retraite à mes ennemis lorsqu'ils auraient du pire et se trouveraient trop faibles pour m'échapper, leur laissant le temps de se refaire, et d'espérer l'occasion de tenter une nouvelle irruption sur mes terres. Cette conduite, si préjudiciable à ma sûreté et à mes intérêts, serait incompatible avec la neutralité. Lors donc que mes ennemis battus se retirent chez lui, si la charité ne lui permet pas de leur refuser passage et sûreté, il doit les faire passer outre le plus tôt possible, et ne point souffrir qu'ils se tiennent aux aguets pour m'attaquer de nouveau; autrement il me met en droit de les aller chercher dans ses terres. C'est ce qui arrive aux nations qui ne sont pas en état de faire respecter leur territoire; le théâtre de la guerre s'y établit bientôt; on y marche, on y campe, on s'y bat, comme dans un pays ouvert à tous venants."*

"CCXVI. The hypothetical case here described was that which Great Britain alleged to have actually occurred, except that the circumstances were of a more aggravated



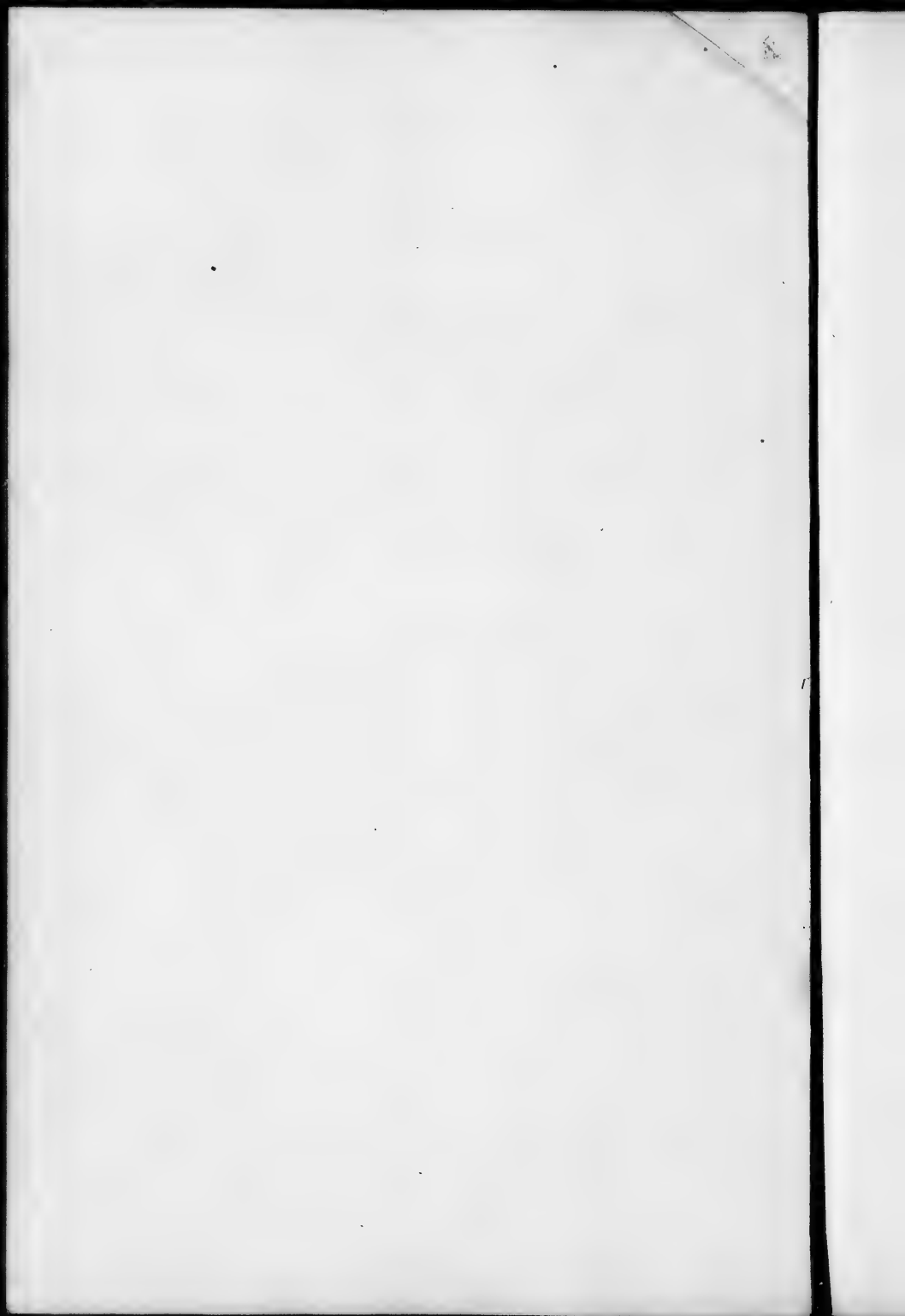
character, with respect to the invasion of her Canadian possessions in 1838. For she alleged that the Canadian rebels not only found shelter on the American frontier of the Niagara, but that American citizens joined the rebels, and that they obtained arms, by force indeed, from the American arsenals, and that shots were fired from an island within the American territories, while a steamer called the 'Caroline' was employed in the transport of munitions of war to the island, which, when not so employed, was moored off the American shore. In this state of things a British captain and crew, having boarded and forcibly captured the 'Caroline,' cut her adrift and sent her down the Falls of Niagara. The act was made the subject of complaint, on the ground of violation of territory, by the American Government, and vindicated by Great Britain on the ground of self-preservation, which, if her version of the facts were correct, was a sufficient answer, and a complete vindication. . . .

"CCXX. It is a received maxim of international law that the Government of a State may prohibit the entrance of strangers into the country, and may therefore regulate the conditions under which they shall be allowed to remain in it, or may require and compel their departure from it.

"Chapter XI.—*Right to a free Development of National Resources by Commerce.*

" . . . It is perfectly competent to any nation to make what regulations it pleases with respect to its own commerce, to admit every nation equally to it, to exclude nations from it, to admit some under favourable, and others under unfavourable, conditions—unless, indeed, such original liberty be curtailed by the express provisions of a Treaty.

"A nation has the same power of restricting commerce with regard to its distant provinces and Colonies. Every Colony almost has, at one time or other, been confined to commercial intercourse with its mother-country, or to some great privileged Company of that country." (Pp. 252, 253, 254, 255, 260, 262, 263.)



1

5

*A Note of Authorities arranged under
Seventeen Heads.*

1. Sources of International Law.
 2. Right to fish in the Sea.
 3. Admiralty Jurisdiction.
 4. Piracy.
 5. Slavery.
 6. Right of Search.
 7. Right of Seizure.
 8. Hovering Acts.
 9. Prescription.
 10. Behring Sea Jurisdiction.
 11. Operation of Municipal Laws.
 12. Operation of Colonial Laws.
 13. Right of Defence.
 14. Animals *feræ naturæ*.
 15. Possession.
 16. Damages.
 17. Procedure and Evidence.
-

Text-Books cited.

Blackstone's Commentaries (1862 ed.).
Comyn's Digest.
Heffter's *Droit International de l'Europe*.
Kent's Commentaries on American Law (9th ed.).
Kent's International Law, by Abdy.
Manning's Law of Nations, by Sheldon Amos.
Martens' *Traité de Droit International*.
Maxwell on the Interpretation of Statutes (2nd ed.).
Pollock and Wright on Possession.
Sedgwick on the Interpretation and Application of
Statutory and Court Law, New York, 1857.
Story's Commentaries on the Conflict of Laws (8th ed.),
by Bigelow.
Wheaton's International Law, by Dana.

Cases cited.

A.-G. for Hong Kong v. Kwok A Sing, L.R., 5 P.C.,
179.
"Antelope," The, 10 Wheaton, 66.
"Argentino," The, 14 App. Cas., 619.
Blades v. Higgs, 11 H.L.C., 621.
British Linen Company v. Drummond, 10 B. and C.,
903.
Buron v. Denman, 2 Ex., 167.
Carrington v. Tylor, 11 East, 571.
Cope v. Doherty, 2 De G. and J., 614.

- Evans v. Nicholson, 32 L.T., 778.
 Forbes v. Cochrane, 2 B. and C., 448; 2 State Trials, N.S., 147.
 Graham v. Ewart, 11 Ex., 326; 1 H. and N., 550; 7 H.L.C., 331.
 "Halley," The, L.R., 2 P.C., 193.
 Jeffreys v. Boosey, 4 H.L.C., 926.
 Keeble v. Hickeringill, 11 East, 574 n.
 Leroux v. Brown, 12 C.B., 801.
 Lonsdale v. Rigg, 11 Ex., 654; 1 H. and N., 923.
 "Le Louis," 2 Dod., 210.
 "Louisa Simpson," The, 2 Saw., 57.
 Macleod v. A.-G. for New South Wales, L.R., 1891, A.C., 445.
 Madrazo v. Willes, 3 B. and A., 353.
 Phillips v. London and South-Western Railway Company, 5 C.P.D., 280.
 R. v. 49 Casks of Brandy, 3 Hagg. Ad., 257.
 R. v. Keyn, 2 Ex. D., 63.
 R. v. Leech, 7 Cox, C.C., 100.
 R. v. Rogers, 3 Q.B.D., 28.
 R. v. Shickle, 1 C.C.R., 158.
 The Slave, Grace, 2 Hagg. Ad., 94; 2 State Trials, N.S., 274.
 Triquet v. Bath, 3 Burr., 1478.
 "Twce Gebroeders," The, 3 Rob., Adm., 336.
 Young v. Hiehens, 6 Q.B., 606.
 "Zollverein," The, Swabey, 98.

1. Sources of International Law.

Wheaton's International Law, s. 15. Dana's note thereto, 11. Kent's International Law, pp. 4 and 37. Triquet v. Bath, 3 Burr., 1478 (at p. 1481). The last two authorities are set out in the printed Argument at pp. 34, 35.

2. Right to fish in the Sea.

The exclusive right to fish is one of the purposes for which the 3-mile limit exists.

Wheaton, s. 189; R. v. 49 Casks of Brandy, 3 Hagg. Ad. 257, at pp. 289, 290, per Sir John Nicholl; Manning's Law of Nations, by Sheldon Amos, pp. 119, 120. These authorities are set out on pp. 81, 82 of British Counter-Case.

A nation has no right to impose on independent nations conditions relative to the use of the sea. This would involve the power of depriving mankind of the fishery.

Heffter, p. 149.

The right of fishing in the open sea cannot be forbidden to any nation.

Martens, p. 497.

3. Admiralty Jurisdiction.

A foreigner in command of a foreign ship passing within 3 miles of the English coast negligently ran into a British ship and sank her, thereby drowning a passenger. Held, by seven Judges to six, that the Central Criminal Court, which has the powers formerly possessed by the Admiral, had no jurisdiction to try the captain for manslaughter.

R. v. Keyn, 2 Ex. D., 63.

The crime was not committed on board the British ship, because there was no *intention* (as there is in murder); nor was the man who committed it within the jurisdiction.

Per Cockburn, C.J., Lush and Field, J.J., and Pollock, B. *Ibid.*, pp. 232 *et seq.*

"Neither in will nor in deed can he be considered to have been on board the British vessel."

Per Sir R. Phillimore. *Ibid.*, p. 66.

"If the act was wilful, it is done where the will intends it should take effect; alike when it is negligent."

Per Bramwell, L.J. *Ibid.*, p. 150.

A false pretence by letter is made at the place of delivery.

R. v. Leech, 7 Cox, C.C., 100.

A letter admitting a debt forms a continuous account stated to the place of delivery.

Evans v. Nicholson, 32 L.T., 778.

A letter from a clerk falsely representing that he had not received certain money for his employers, was held to be an act of embezzlement at the place of delivery.

R. v. Rogers, 3 Q.B.D., 28.

4. Piracy.

Definition of piracy *jure gentium*.

A.-G. for Hong Kong v. Kwok A Sing, L.R., 5 P.C., 179, at pp. 199, 200.

Heffer, p. 203.

5. Slavery.

A ship seized on the high sea for being employed in the Slave Trade and forcibly resisting the search of the King's cruisers, held to have been wrongly condemned.

"*Le Louis*," 2 Dod., 210.

Ship not to be condemned, unless Trade prohibited by law of her own country.

Ibid., p. 243.

Two principles are fundamental: (1) perfect equality of States; (2) equal right to use of unappropriated sea.

Ibid., p. 243. This passage is set out on p. 77 of British Counter-Case.

Extravagant claims to the appropriation of particular seas discussed.

Ibid., p. 245.

A foreigner who is not prohibited from carrying on the Slave Trade by the laws of his own country may, in a British Court of Justice, recover damages sustained by him in respect of the wrongful seizure by a British subject, of a cargo of slaves on board of a ship then employed by him in carrying on the African Slave Trade.

Madrazo v. Willes, 3 B. and A., 353.

"Africans who are first captured by a belligerent privateer, fitted out in violation of our [United States] neutrality, or by a pirate, and then recaptured and brought into the ports of the United States, under a reasonable suspicion that a violation of the Slave Trade Acts was intended, are not to be restored without full proof of the proprietary interest; for in such a case the capture is lawful.

"And whether in such a case restitution ought to be decreed at all, was a question on which the Court was equally divided."

The "Antelope," 10 Wheaton, p. 66.

A trade protected by the laws of all commercial nations cannot be contrary to the law of nations.

Per Marshall, C.J. *Ibid.*, p. 115.

Legality of capture of vessel engaged in Slave Trade depends on its own law.

Ibid., p. 118.

Slave Trade neither piratical nor contrary to law of nations.

Ibid., p. 119.

Perfect equality of nations universally acknowledged.

Ibid., p. 122.

No nation can prescribe a rule for others, and the Trade remains lawful to those whose Governments have not forbidden it.

Ibid., p. 122.

The number of slaves must be proved by the claimant of them.

Ibid., p. 128.

The individual owner of the slaves must be shown.

Ibid., p. 131.

Slaves belonging to a British subject carrying on business in Spanish territory escaped, and went on board a British ship not lying in Spanish waters. The commanding officer declined to compel them to leave his ship, and, as they did not wish to do so, conveyed them to a British Colony. Held that no action would lie by the owner against the officer, the law of slavery being a local law only. *Madrado v. Willes* distinguished on the ground that there illegal force was used in the capture of the ship and slaves.

Forbes v. Cochrane, 2 B. and C., 448; 2 State Trials, N.S., 147.

Temporary residence in England without manumission suspends, but does not extinguish, the status of slavery of a person who, after such residence, voluntarily returns to a country where slavery is legal.

The Slave, Grace, 2 Hagz., 94; 2 State Trials, N.S., 274.

A foreigner can maintain trespass in the English Courts for the seizure of his slaves abroad.

Buron v. Denman, 2 Ex., 167.

6. Right of Search.

If no right to search, no right to take advantage of discoveries made by search.

Per Lord Stowell, in the "*Le Louis*," 2 Dod., 210, at p. 242.

Except against pirates, no right of visitation and search on the high sea, save on the belligerent claim.

Ibid., pp. 244, 245.

[290]

Crime, other than piracy, gives no right of search; still less does mere possibility of crime. And nothing can be recognized as criminal which the law of nations does not so regard.

Ibid., pp. 248, 249.

The right of visitation and search is strictly a belligerent right.

Per Marshall, C.J., in "The Antelope," 10 Wheaton, 66, at p. 118.

Right of stopping and searching ships in time of peace belongs to no nation except by contract with the nation to which the ships belong.

Per Parke, B. (summing up in trial at bar), in *Buron v. Denman*, 2 Ex., 167, at p. 187.

Observations on evils of right of search.

Per Lord Stowell, in the "Le Louis," 2 Dod., 210, at pp. 257, 258.

No State can stop or visit the ships of another country.

Martens, p. 497.

7. Right of Seizure.

No right of bringing in for adjudication in time of peace for anything not repugnant to the law of nations, nor piracy.

Per Marshall, C.J., in the "Antelope," 10 Wheaton, 66, at p. 122.

8. Hovering Acts.

Maritime States have claimed a right of visitation on parts of the ocean allowed to be parts of their dominions for various purposes. Such are our Hovering Laws. They have nothing in common with a right of visit and search on the unappropriated parts of the ocean.

Per Lord Stowell, in the "Le Louis," 2 Dod., 210, at pp. 245, 246.

Wheaton says that the Hovering Acts give a jurisdiction 4 leagues from the coast, and that the English and United States' Courts have declared them consistent with the law of nations. Dana differs in an elaborate note, and says that municipal seizures cannot be made, for any purpose, beyond territorial waters.

Wheaton's International Law, s. 179; and note 108, by Dana.

9. Prescription.

Portions of the sea may be prescribed for, but the presumption is against such exclusive rights.

Per Lord Stowell, in the "Twee Gebroeders," 3 Rob., Adm., 336.

The open sea is not capable of being possessed as private property.

Kent's International Law, by Abdy, p. 97.

The sea cannot become the exclusive property of any nation.

Wheaton, 187.

However long acquiesced in, an appropriation of the open sea by one nation is inadmissible.

Dana's note to same, 113.

10. Behring Sea Jurisdiction.

In a suit to enforce a forfeiture of the schooner "Louisa Simpson" and cargo for infringing section 4 of the Act of the 27th July, 1868, by importing distilled spirits into Alaska, Deady, J., held the Act to have been infringed when the vessel, which had passed through Behring Sea, came to an anchor east of a line drawn from Point Hope to Cape Prince of Wales. This line is in the Arctic Ocean, and lies well east of the water boundary of 1867.

The "Louisa Simpson," 2 Saw., 57.

11. Operation of Municipal Laws.

These affect only subjects and foreigners whose persons or property may be within the jurisdiction.

Sedgwick on the Interpretation and Application of Statutory and Court Law, New York, 1857, p. 70. Story's Commentaries on the Conflict of Laws, 8th ed., by Bigelow, Boston, 1883, s. 20. Maxwell on the Interpretation of Statutes, 2nd ed., 1883, p. 168. The "Zollverein," Swabey's Reports, p. 98 (per Dr. Lushington).

The above authorities are set forth on pp. 97 to 99 of the British Counter-Case.

Per Turner, L.J., in *Cope v. Doherty*, 2 De G. and J., 614.

Per Parke, B., in *Jeffreys v. Boosey*, 4 H.L.C., 926.

These last two authorities are set out on p. 57 of the Printed Argument for Great Britain.

In a case of tort, an English Court will not enforce a foreign municipal law by giving damages for an act which by English law imposes no liability.

The "Halley," L.R., 2 P.C., 193.

12. *Operation of Colonial Laws.*

These are confined to the Colony in which they are made.

Macleod v. A. G. for New South Wales, L.R. 1891. A.C., 445.

13. *Right of Defence.*

This is founded on the reason that on the high sea there is no common law or any authority capable of making itself respected. The inconveniences caused by the absence of a common law are attenuated by various rules: among others, by the rule that the laws of each State bind its subjects.

Heffter, p. 163.

14. *Animals fere nature.*

The law as laid down in Comyn's Digest, vol. ii, p. 135; in 2 Blackstone's Com. (1862 ed.), p. 396; and in 2 Kent's Com. (9th ed.), p. 432, will be found on pp. 82 and 83 of the British Counter-Case.

Where fish had been taken in a net in which there was still an opening of about 7 fathoms, it was held that a man who rowed his boat to the entrance and took the fish was not liable to an action, because the owner of the net had no possession of the fish.

Young v. Hitchens, 6 Q.B., 606.

The right of taking wild animals on land part of a manor is a territorial, not a seignorial, right. This was common ground to all the Judges in the three Courts.

Graham v. Ewart, 11 Ex., 326; 1 H. and N., 550; 7 H.L.C., 331.

See also Lonsdale v. Rigg, 11 Ex., 654; 1 H. and N., 923.

A trespasser cannot, by his wrongful act in killing wild animals, obtain the property in

them as against the owner of the land on which he starts and kills them.

Blades v. Higgs, 11 I.L.C., 621.

Partridges, hatched and reared by a common hen, while they remain with her, and from their inability to escape, are practically under the dominion and in the power of the owner of the hen, may be the subject of larceny, though the hen is not confined in a coop or otherwise, but allowed to wander with her brood about the premises of her owner.

R. v. Shickle, 1 C.C.R., 158.

Disturbance of wild fowl in decoys by firing of guns.

Carrington v. Taylor, 11 East, 571; *Keeble v. Hickeringill*, *Ibid.*, 574 n.

15. Possession.

Animus domini is not necessary to possession.

Pollock and Wright on Possession, pp. 20, 58, and 59.

Physical control is not necessary to possession.

Ibid., p. 22.

Possession may be had of a thing which, to common apprehension, is lost or abandoned.

Ibid., p. 19.

16. Damages.

Prospective earnings may be taken into account in calculating damages caused by an interruption to the employment of an existing vessel.

The "Argentino," 14 App. Cas., 519; see also *Phillips v. London and South-Western Railway Company*, 5 C.P.D., 280.

17. Procedure and Evidence.

English Statute of Limitations bars action on foreign contract.

British Linen Company v. Drummond, 10 B. and C., 903.

Statute of Frauds prevents an action in England on a foreign contract not evidenced as required by s. 4.

Leroux v. Brown, 12 C.B., 801.

22

8

EXTRACTS

FROM

WHARTON'S INTERNATIONAL LAW

DIGEST, VOL. III, ON RIGHT OF SEARCH

P. 145.

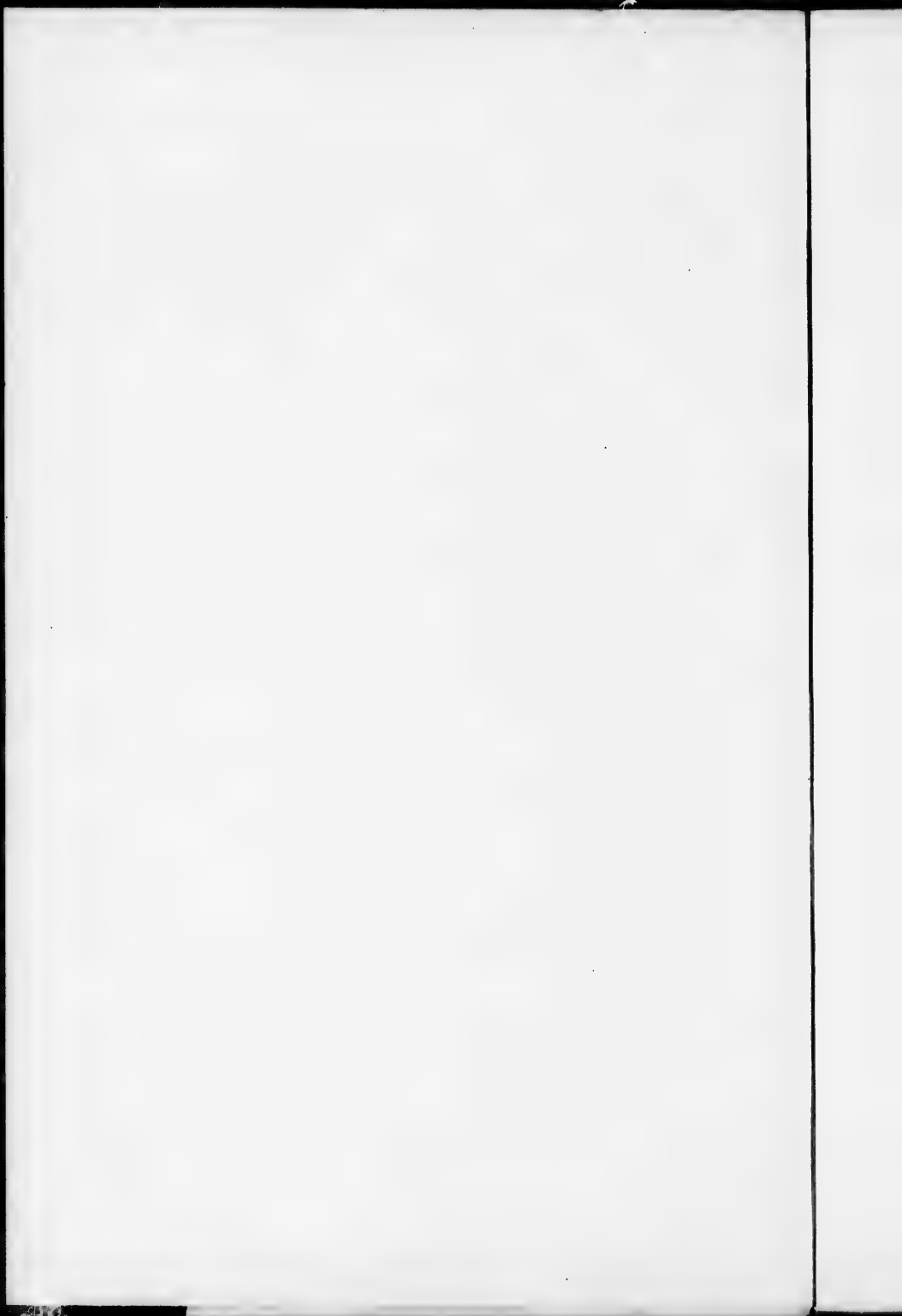
Mr. Cass, Secretary of State, to Mr. Dallas. Feb. 23, 1859.

The forcible visitation of vessels upon the ocean is prohibited by the law of nations, in time of peace, and this exemption from foreign jurisdiction is now recognized by Great Britain, and, it is believed, by all other commercial powers, even if the exercise of a right of visit were essential to the suppression of the slave trade. Whether such a right should be conceded by one nation to its co-states of the world is a question for its own consideration, involving very serious consequences, but which is little likely to encounter any prejudiced feelings in favour of the slave trade in its solution, nor to be influenced by them.

P. 148.

President Grant. Fifth Annual Message, 1873.

It is a well-established principle, asserted by the United States from the beginning of their national independence, recognized by Great Britain and other maritime powers, and stated by the Senate in a resolution passed unanimously on 16th June, 1858, that American vessels on the high seas in time of peace, bearing the American flag, remain under the jurisdiction of the country to which they belong; and therefore any visitation, molestation, or detention of such vessels by force, or by the exhibition of force, on the part of a foreign power, is in derogation of the sovereignty of the United States.



Mr. Marcy, Secretary of State, to Mr. Cueto. March, 28, 1855.

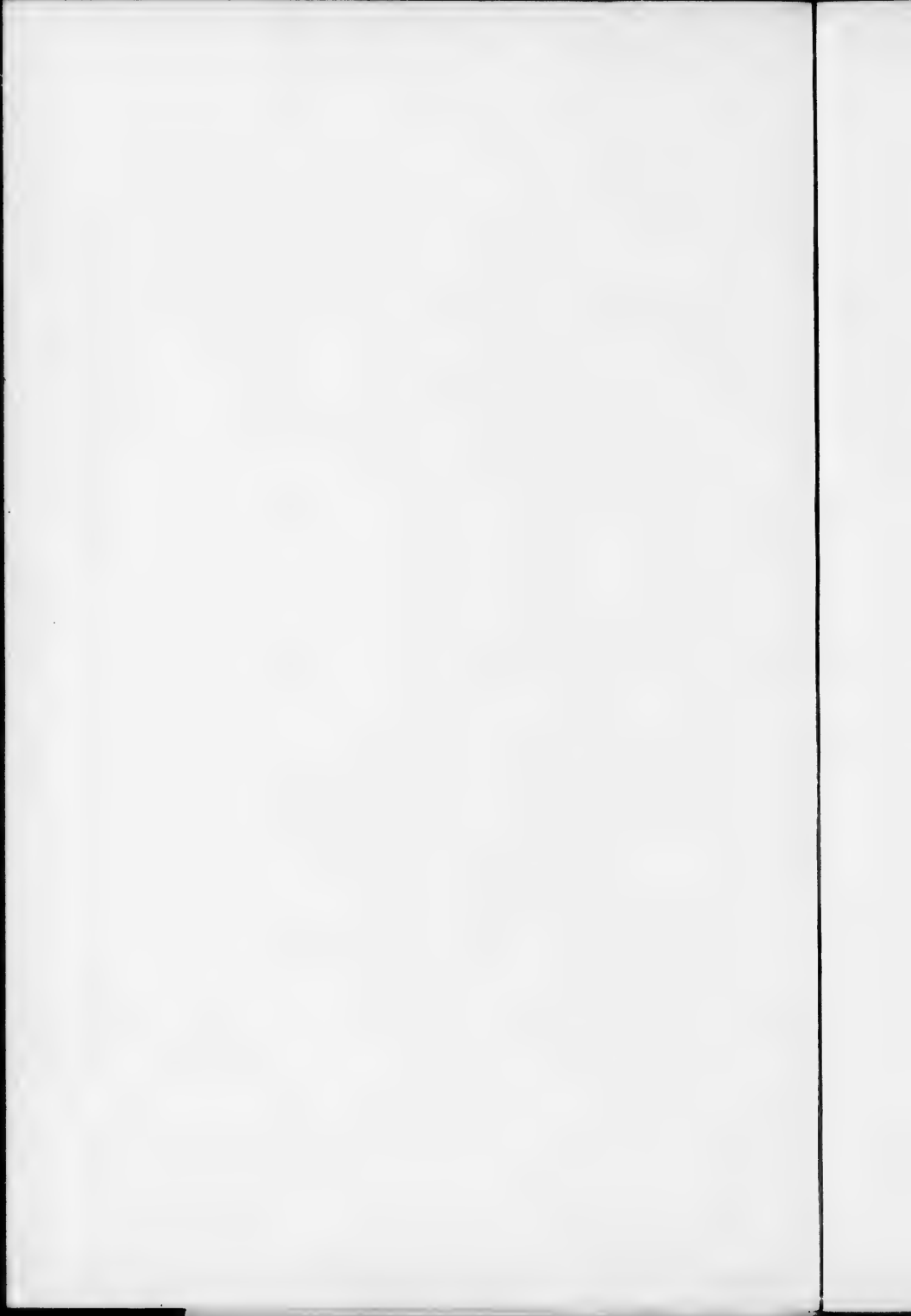
The right of visitation and search is a belligerent right, and no nation which is not engaged in hostilities can have any pretence to exercise it upon the open sea.

The established doctrine upon this subject is that the right of visitation and search of vessels, armed or unarmed, navigating the high seas in time of peace does not belong to the public ships of any nation. This right is strictly a belligerent right, allowed by the general consent of nations in time of war, and limited to those occasions.

The undersigned avails himself of the authority and language of a distinguished writer on international law :—We again repeat that it is impossible to show a single passage of any institutional writer on public law, or the judgment of any court by which that law is administered, either in Europe or America, which will justify the exercise of such a right on the high seas in time of peace independent of special compact.

The right of seizure for a breach of the revenue laws, or laws of trade and navigation of a particular country, is quite different.

The utmost length to which the exercise of this right on the high seas has ever been carried in respect to the vessels of another nation has been to justify seizing them within the territorial jurisdiction of the state against whose laws they offend, *and* pursuing them in case of flight beyond that limit, arresting them on the ocean, and bringing them in for adjudication. This, however, suggests the Supreme Court of the United States, in the case before quoted, of the *Marianna Flora*, has never been supposed to draw after it any right of visitation or search. The party in such case, seizes at his peril. If he establishes the forfeiture he is justified.



P. 166.

Marshall C-J — The Nereide — Q. Cranch, 406.

What is this right of search? It is a substantive and independent right wantonly, and in the pride of power, to vex and harass neutral commerce, because there is a capacity to do so; or to indulge the idle and mischievous curiosity of looking into neutral trade; or the assumption of a right to control it.

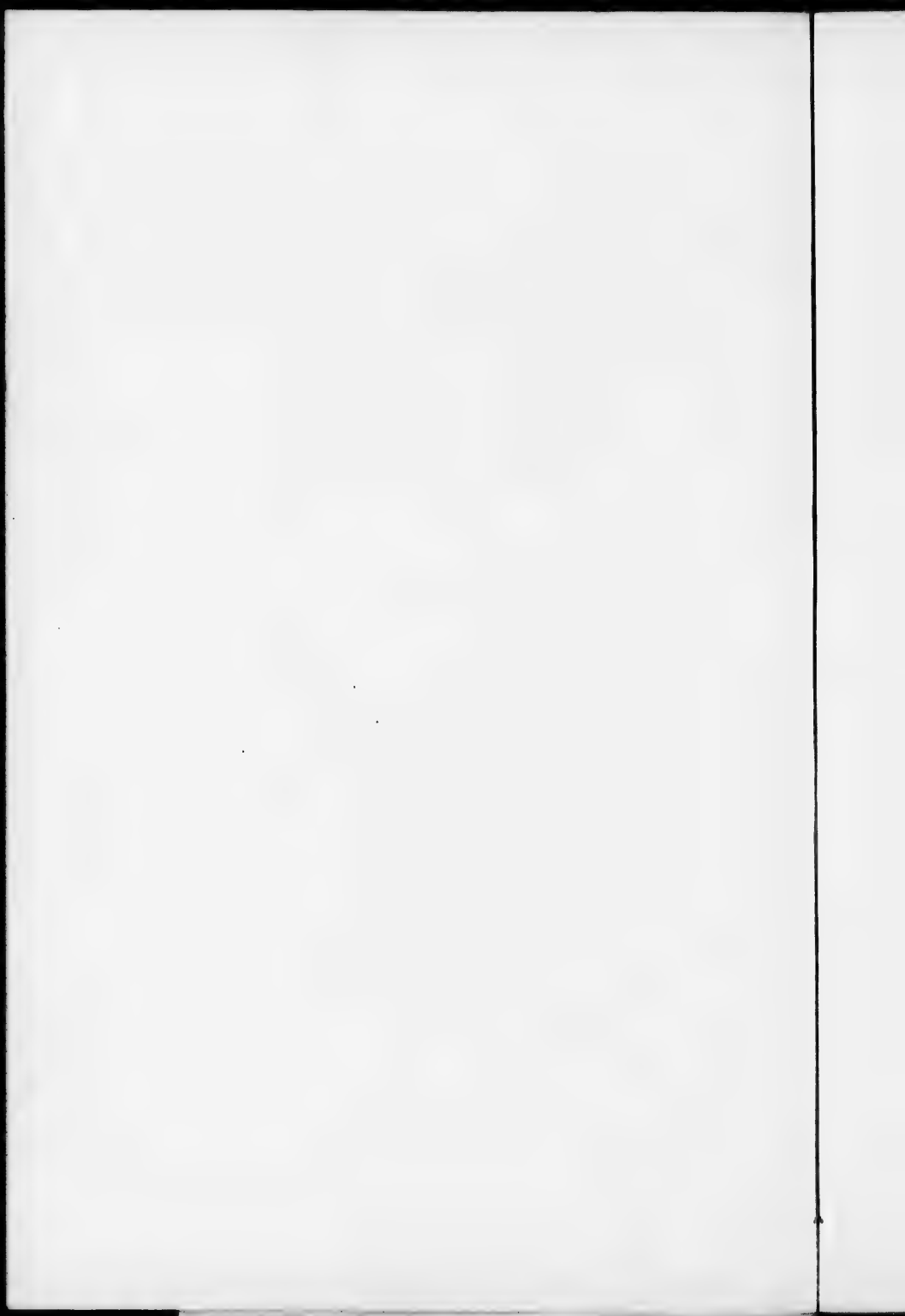
The right of search has been truly denominated a right growing out of and ancillary to the greater right of capture. Where this greater right may be legally exercised without search, the right of search can never rise or come into question.

P. 134.

President Tyler's message. Feb. 27, 1843,

The attempt to justify such a pretension [to subject the trade of the world to a system of maritime police adopted at will by a naval power, in any places where such power might see fit to prohibit to its own subjects or citizens] from the right to visit and detain ships upon reasonable suspicion of piracy would deservedly be exposed to universal condemnation, since it would be an attempt to convert an established rule of maritime law, incorporated as a principle into the international code by the consent of all nations, into a rule and principle adopted by a single nation, and enforced only by its assumed authority. To seize and detain a ship upon suspicion of piracy, with probable cause and good faith, affords no just ground either for complaint on the part of the nation whose flag she bears, or claim of indemnity on the part of the owner. The universal law sanctions, and the common good requires the existence of such a rule. The right, under such circumstances, not only to visit and detain, but to search a ship, is a perfect right, and involves neither responsibility nor indemnity.

But with this single exception, no nation has, in time of peace, any authority to detain the ships of another upon the high seas, on any pretext whatever, beyond the limits of her territorial jurisdiction



Mr Evarts, Secretary of State, to Mr Fairchild, Aug. 11, 1880:

It needs no argument to show that the exercise of any such asserted right [visitation and search] upon commercial vessels, on the high seas, in time of peace, is inconsistent with the maintenance of even the most ordinary semblance of friendly relations between the nation which thus conducts itself and that whose merchant vessels are exposed to systematic detention and search by armed force.

.....
This Government never has recognized, and never will recognize, any pretence or exercise of sovereignty on the part of Spain beyond the belt of a league from the Cuban coast over the commerce of this country in time of peace. This rule of the law of nations we consider too firmly established to be drawn into debate, and any dominion over the sea outside of this limit will be resisted with the same firmness as if such dominion were asserted in mid ocean.

.....
But the distinction between dominion over the sea, carrying a right of visit and search of all vessels found within such dominion, and fiscal or revenue regulations of commerce, vessels and cargoes engaged in trade as allowed with our ports to a reasonable range of approach to such ports, needs only to be pointed out to be fully appreciated.

Every nation has full jurisdiction of commerce with itself, until by treaty stipulations it has parted with some portions of this full control.

In this jurisdiction is easily included a requirement that vessels seeking our ports, in trade, shall be subject to such visitation and inspection as the exigencies of our trade may demand, in the judgment of this Government, for the protection of the revenues and the adequate administration of the customs service.

This is not dominion over the sea where these vessels are visited, but dominion over this commerce with us, its vehicles and cargoes, even while at sea. It carries no assertion of dominion, territorial and *in invitum*, but over voluntary trade in progress and by its own election, submissive to our regulations of it, even in its approaches to our coasts and while still outside our territorial dominion.

American Reply to the Right claimed by Great Britain during the War with France to Search Neutral Vessels on the High Seas, and to Seize her own Subjects when found serving under a Neutral Flag. (1804.)

Mr. Madison to Mr. Monroe;
January 8, 1804.
Laid before Congress, 1806.

WE consider a neutral flag, on the high seas, as a safeguard to those sailing under it. Great Britain, on the contrary, asserts a right to search for, and seize, her own subjects; and under that cover, as cannot but happen, are often seized and taken off citizens of the United States, and citizens or subjects of other neutral countries, navigating the high seas, under the protection of the American flag.

Were the right of Great Britain, in this case, not denied, the abuses flowing from it would justify the United States in claiming and expecting a discontinuance of its exercise. But the right is denied, and on the best grounds.

Although Great Britain has not yet adopted, in the same latitude with most other nations, the immunities of a neutral flag, she will not deny the general freedom of the high seas, and of neutral vessels navigating them, with such exceptions only as are annexed to it by the Law of Nations. She must produce, then, such an exception in the Law of Nations, in favour of the right she contends for. But in what written and received authority will she find it? In what usage except her own will it be found? She will find in both that a neutral vessel does not protect certain objects denominated contraband of war, including enemies serving in the war, nor articles going into a blockaded port, nor, as she has maintained, and as we have not contested, enemy's property of any kind. But nowhere will she find an exception to this freedom of the seas, and of neutral flags, which justifies the taking away of any person, not an enemy, in military service, found on board a neutral vessel.

If Treaties, British as well as others, are to be consulted on this subject, it will equally appear that no countenance to the practice can be found in them. Whilst they admit a contraband of war, by enumerating its articles, and the effect of a real blockade by defining it, in no instance do they affirm or imply a right in any Sovereign to enforce his claims to the allegiance of his subjects on board neutral vessels on the high seas. On the contrary, whenever a belligerent claim against persons on board a neutral vessel is referred to in Treaties, enemies in military service alone are excepted from the general immunity of persons in that situation; and this exception confirms the immunity of those who are not included in it.

It is not, then, from the law or the usage of nations, nor from the tenour of Treaties, that any sanction can be derived for the practice in question. And surely it will not be pretended that the sovereignty of any nation extends, in any case whatever, beyond its own dominions, and its own vessels on the high seas. Such a doctrine would give just claim to all nations, and, more than anything, would countenance the imputation of aspiring to an universal empire of the seas. It would be the less admissible, too, as it would be applicable to times of peace, as well as to times of war, and to property as well as to persons. If the law of allegiance, which is a municipal law, be in force at all on the high seas, on board foreign vessels, it must be so at all times there, as it is within its acknowledged sphere. If the reason alleged for it be good in time of war, namely, that the Sovereign has then a right to the service of all his subjects, it must be good at all times, because at all times he has the same right to their service. War is not the only occasion for which he may want their services, nor is external danger the only danger against which their services may be required for his security. Again, if the authority of a municipal law can operate on persons in foreign vessels on the high seas, because within the dominion of their Sovereign they would be subject to that law, and are violating that law by being in that situation, how reject the inference that the authority of a municipal law may equally be enforced, on board foreign vessels, on the high seas, against articles of property exported in violation of

such a law, or belonging to the country from which it was exported? and thus every commercial regulation, in time of peace too, as well as of war, would be made obligatory on foreigners and their vessels, not only whilst within the dominion of the Sovereign making the regulation, but in every sea, and at every distance where an armed vessel might meet with them. Another inference deserves attention: If the subjects of one Sovereign may be taken by force from the vessels of another, on the high seas, the right of taking them when found implies the right of searching for them—a vexation of commerce, especially in time of peace, which has not yet been attempted, and which, for that as well as other reasons, may be regarded as contradicting the principle from which it would flow.

Taking reason and justice for the tests of this practice, it is peculiarly indefensible; because it deprives the dearest rights of persons of a regular trial, to which the most inconsiderable article of property captured on the high seas is entitled; and leaves their destiny to the will of an officer, sometimes cruel, often ignorant, and generally interested, by his want of mariners, in his own decisions. Whenever property found in a neutral vessel is supposed to be liable, on any grounds, to capture and condemnation, the rule in all cases is, that the question shall not be decided by the captor, but be carried before a legal Tribunal, where a regular trial may be had, and where the captor himself is liable to damages for an abuse of his power. Can it be reasonable, then, or just, that a belligerent Commander who is thus restricted, and thus responsible in a case of mere property of trivial amount, should be permitted, without recurring to any Tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiances, and to carry that decision into instant execution, by forcing every individual he may choose into a service abhorrent to his feelings, cutting him off from his most tender connections, exposing his mind and his person to the most humiliating discipline, and his life itself to the greatest dangers? Reason, justice, and humanity unite in protesting against so extravagant a proceeding.

American Reply to the Right claimed by
Great Britain during the War with
France to Search Neutral Vessels on
the High Sea, and to Seize her own
Subjects when found serving under a
Neutral Flag. (1804.)

2021

1000-2000000 { 1888
Preface

1000. &
Mallory's 2000
Mallory's 2000
Mallory's 2000

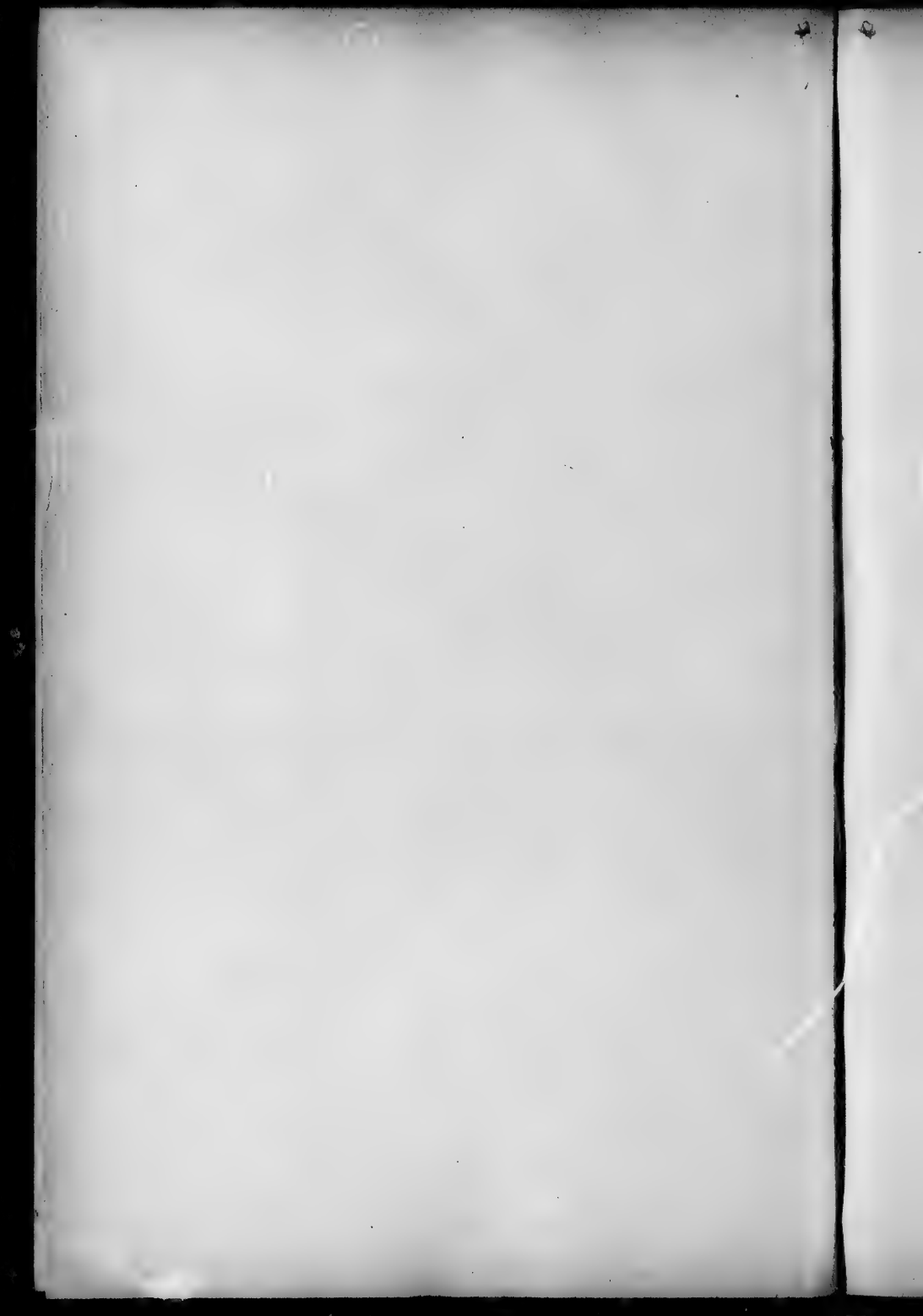
1000. &
Mallory's 2000
Mallory's 2000
Mallory's 2000

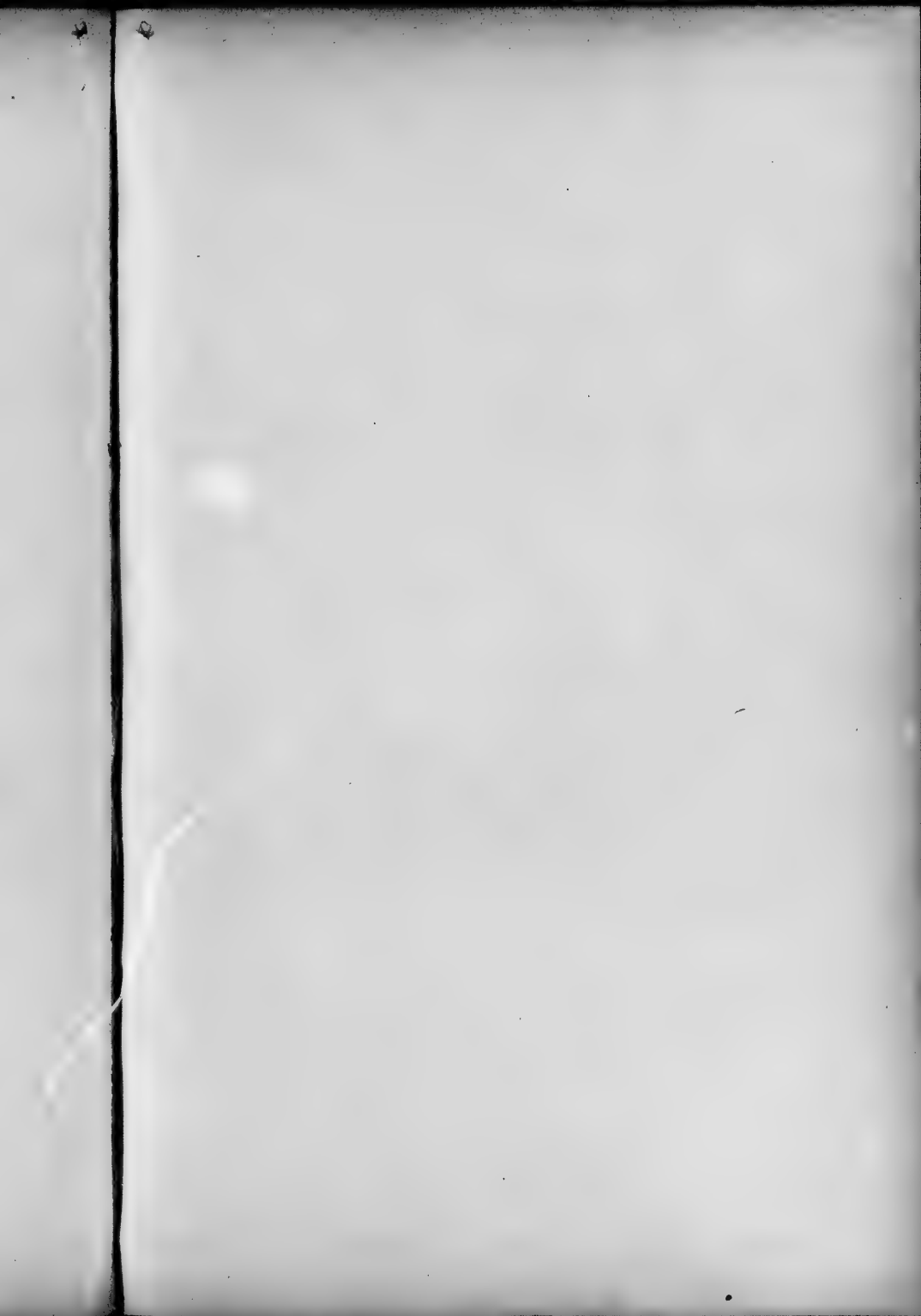
1000. &
Mallory's 2000
Mallory's 2000
Mallory's 2000

BEHRING SEA ARBITRATION.

Collection of Authorities touching—

- (1.) A Marine League as the extent of Coastal Jurisdiction.
- (2.) The freedom of Ocean Fisheries.
- (3.) Inland Seas.
- (4.) Hovering Acts.
- (5.) Collection of Statutes and Treaties touching the universal adoption of the Marine League.





BEHRING SEA ARBITRATION.

Wharton's
"Digest,"
p. 100.

MR. JEFFERSON, Secretary of State, wrote to the Minister for Great Britain in 1793:—

"The limit of our sea league from shore is provisionally adopted as that of the territorial sea of the United States."

On the 10th July, 1832, the United States' Chargé d'Affaires at Buenos Ayres, writing to the Buenos Ayres Foreign Minister on the question of the seal fishery at the Falkland Islands, says:—

"The ocean fishery is a natural right which all nations may enjoy in common. Every interference with it by a foreign Power is a national wrong. When it is carried on within the marine league of the coast which has been designated as the extent of the national jurisdiction, reason seems to dictate a restriction; if, under the pretext of carrying on the fishery, an evasion of the revenue laws of the country may reasonably be apprehended, or any other serious injury to the Sovereign of the coast, he has a right to prohibit it; but as such prohibition derogates from a natural right, the evil to be apprehended ought to be a real, not an imaginary, one."

United States of America committed to the principle of a marine league.

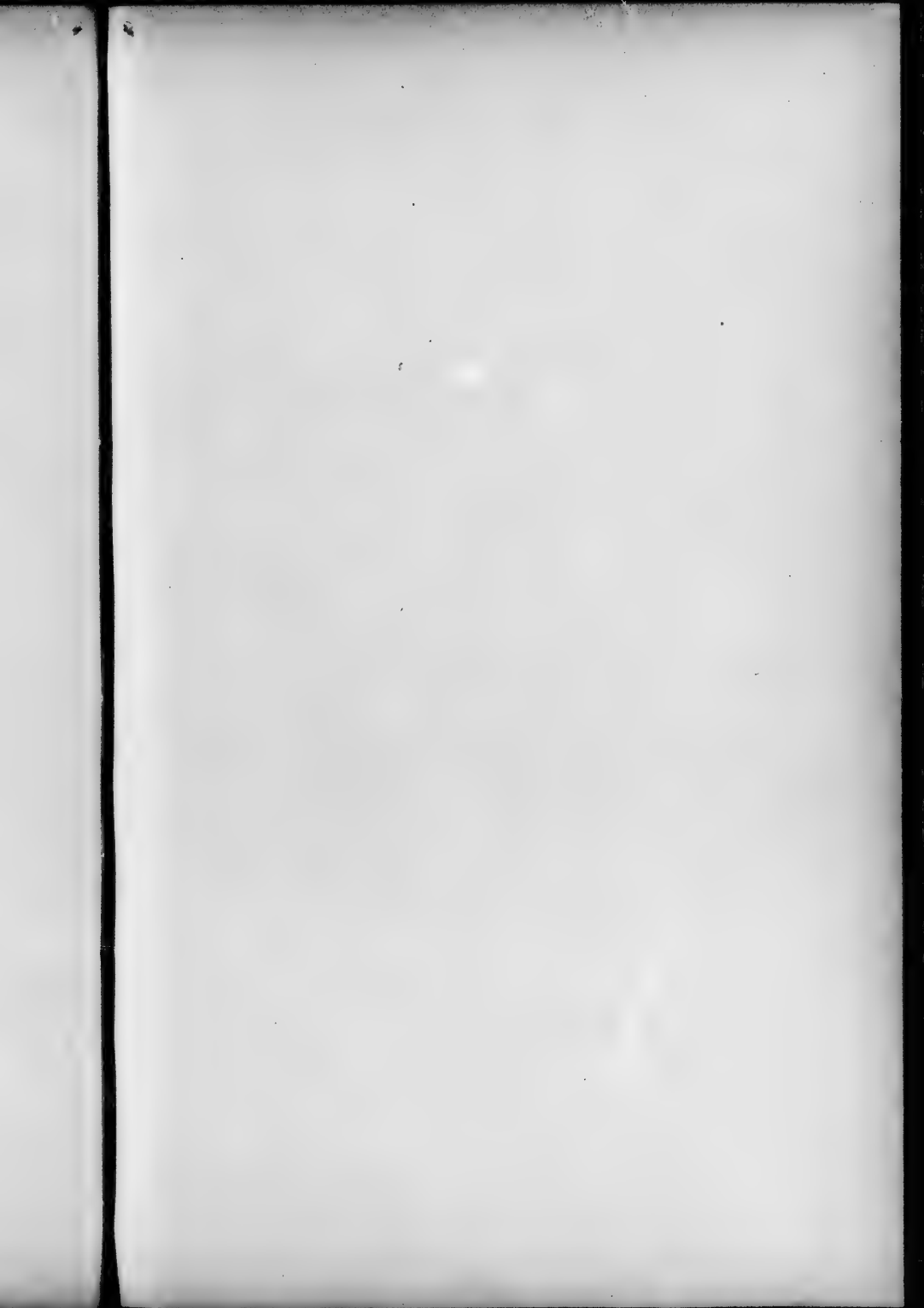
Mr. Webster, in 1842, writes to Lord Ashburton:—

"A vessel on the high seas beyond the distance of 1 marine league from the shore is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation."

Mr. Buchanan, Secretary of State, 1849, wrote:—

Wharton's
"Digest," p. 101.

"The exclusive jurisdiction of a nation extends to the ports, harbours, bays, mouths of rivers, and adjacent parts of sea inclosed by headlands, and also to the distance of 1 marine league, or so far as a cannon-shot will reach from the shore along all its coasts. Within these limits the Sovereign of the mainland may arrest, by due process of law, alleged offenders on board of foreign merchant-ships."



Wharton, in his "Digest of the International Law of the United States," 1886, section 32, vol. i, p. 102, citing MS. notes, Spain, prints portions of a letter from Mr. Seward, Secretary of State, to Mr. Tassara on the 16th December, 1862, where, in connection with the maxim, "*Terræ dominium finitur ubi finitur armorum vis*," he lays down that—

"The range of a cannon-ball is shorter or longer according to the circumstances of projection, and it must be always liable to change with the improvement of the science of ordnance. Such uncertainty upon a point of jurisdiction or sovereignty would be productive of many and endless controversies and conflicts. A more practical limit of national jurisdiction upon the high seas was indispensably necessary, and this was found as the Under-signed (Mr. Secretary Seward) thinks in fixing the limit at 3 miles from the coast. This limit was early proposed by the publicists of all maritime nations. While it is not insisted that all nations have accepted or acquiesced and bound themselves to abide by this rule when applied to themselves, yet these points involved in the subject are insisted upon by the United States: (1) that this limit has been generally recognized by nations; (2) that no other general rule has been accepted; and (3) that, if any State has succeeded in fixing a larger limit, this has been done by the exercise of maritime power, and constitutes an exception to the general understanding which fixes the range of a cannon-shot (when it is made the test of territorial jurisdiction) at 3 miles. So generally is this rule accepted, that writers commonly use the expressions of a range of cannon-shot and 3 miles as equivalents of each other. In other cases, they use the latter expression as a substitute for the former."

In the brief of the United States' counsel at Sitka in 1886, already referred to, it is said:—

"It thus appears that our Government asserted this doctrine in its infancy. It was announced by Mr. Jefferson as Secretary of State and by the Attorney-General in 1793. Mr. Pickering, Secretary of State in 1796, reaffirms it in his letter to the Governor of Virginia, in the following language: 'Our jurisdiction has been fixed to extend 3 geographical miles from our shores, with the exception of any waters or bays which are so land-locked as to be unquestionably within the jurisdiction of the States, be their extent what they may.'

Wheaton's "International Law," vol. i, sec. 32, pp. 2-100.

"Mr. Buchanan, Secretary of State, to Mr. Jordan, in 1849, reiterates this rule in the following language: 'The exclusive jurisdiction of a nation extends to the ports, harbours, bays, mouths of rivers, and adjacent parts of the sea inclosed by headlands.'

"Mr. Seward, in the Senate in 1852, substantially enunciates the same doctrine by declaring that, if we relied alone upon the old rule that only those bays whose

entrance from headland to headland do not exceed 6 miles are within the territorial jurisdiction of the adjoining nation, our dominion to all the large and more important arms of the sea on both our Atlantic and Pacific coasts would have to be surrendered. Our right to jurisdiction over these rests with the rule of international law which gives a nation jurisdiction over waters embraced within its land dominion."

And also :—

"The 3-mile Limit.

Wheaton's "International Law,"
vol. i, sec. 32,
pp. 100 and 109.

"Concerning the doctrine of international law establishing what is known as the marine league belt, which extends the jurisdiction of a nation into adjacent seas for a distance of 1 marine league or 3 miles from its shores, and following all the indentations and sinuosities of its coast, there is at this day no room for discussion. It must be accepted as the settled law of nations. It is sustained by the highest authorities, law-writers, and jurists. It has been sanctioned by the United States since the foundation of the Government. It was affirmed by Mr. Jefferson, Secretary of State, as early as 1793, and has been reaffirmed by his successors—Mr. Pickering, in 1796; Mr. Madison, in 1807; Mr. Webster, in 1842; Mr. Buchanan, in 1849; Mr. Seward, in 1862, 1863, and 1864; Mr. Fish, in 1875; Mr. Evarts, in 1879 and 1881; and Mr. Bayard, in 1886.

"Sanctioned thus by an unbroken line of precedents covering the first century of our national existence, the United States would not abandon this doctrine if they could; they could not if they would."

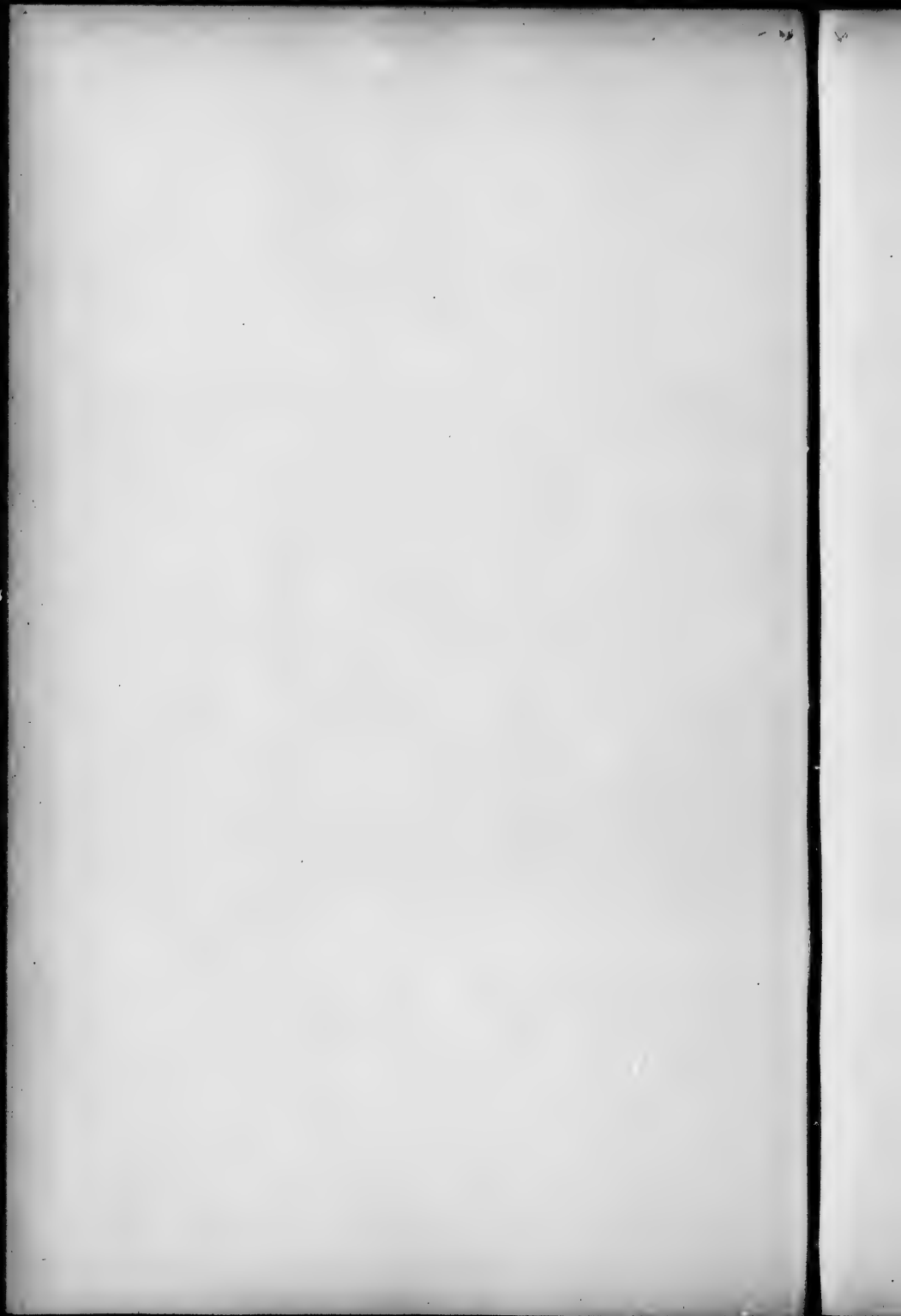
The American publicist, Wheaton, p. 320, thus states the rule of international law :—

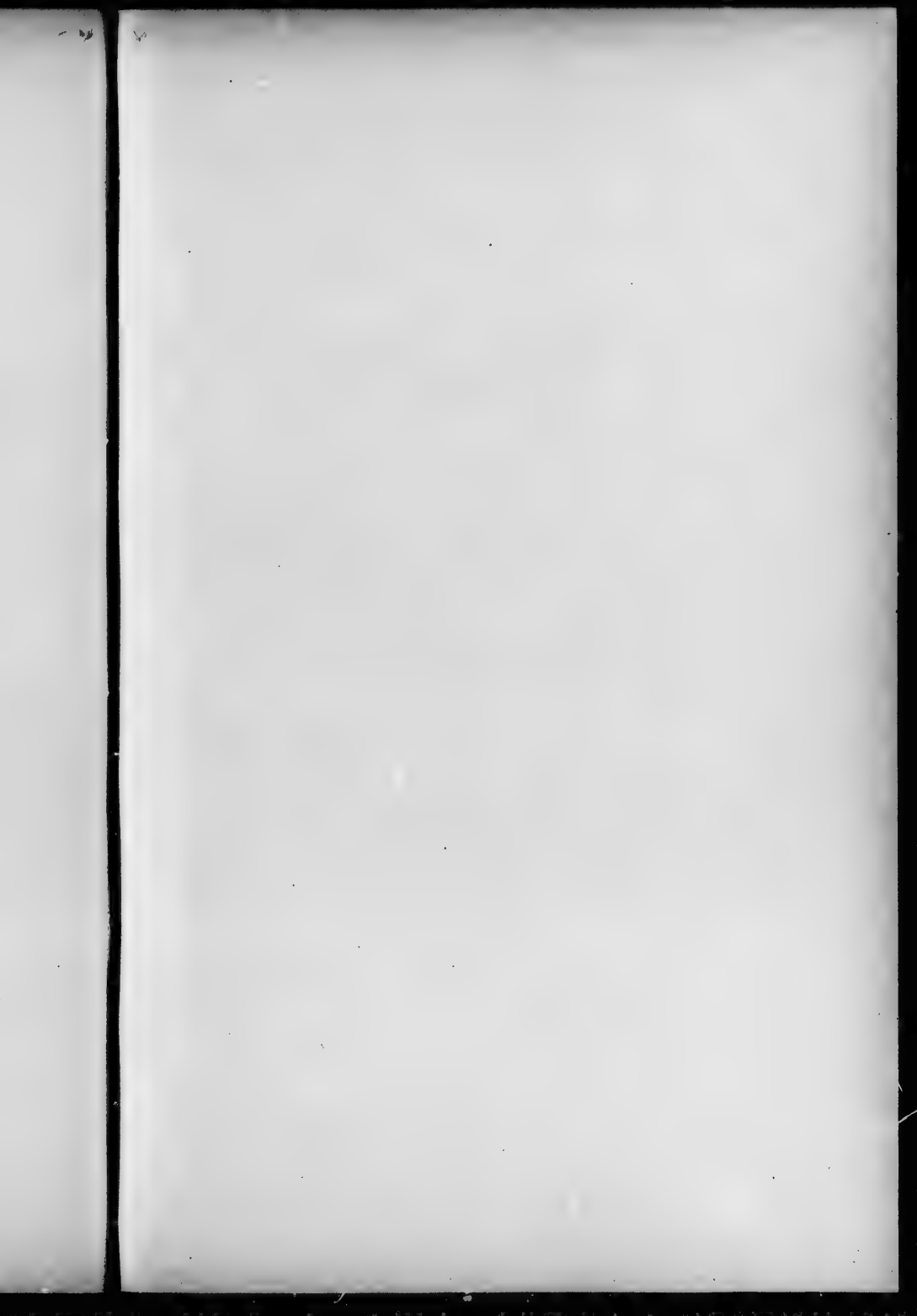
"Maritime territory of every State extends to the ports, harbours, bays, mouths of rivers, and adjacent parts of the sea inclosed by headlands belonging to the same State. The general usage of nations superadds to this extent of territorial jurisdiction a distance of 1 marine league, or as far as a cannon-shot will reach, from the shore along all the coasts of the State. Within this territory its rights of property and territorial jurisdiction are absolute, and exclude those of every other nation."

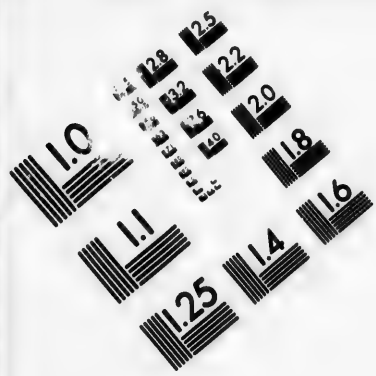
Mr. Lawrence, in a note to Wheaton, says :—

Wheaton, sec. 179.

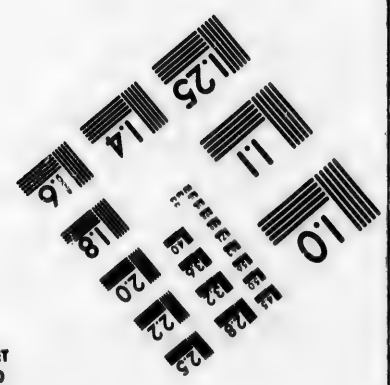
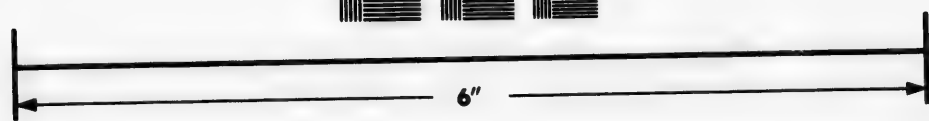
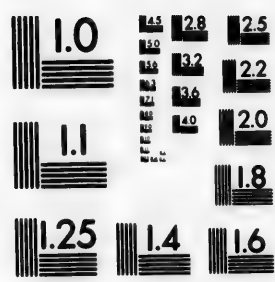
"It has been shown (note, p. 226), referring to visitation in time of peace, that no apprehended inconvenience on account of the revenue laws or the public safety would give a right to a ship of war to stop a merchantman belonging to another country, even near the coast, beyond 1 marine league. So far as there is any interference







**IMAGE EVALUATION
TEST TARGET (MT-3)**



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4303

1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0

10
11
12
13
14
15
16
17
18
19
20

4

allowed under the Hovering Acts with foreign vessels, it is exclusively through the comity of the Power to which the vessels belong."

Mr. Fish, Secretary of State, wrote to Sir Edward Thornton on the 22nd January, 1875:—

"The instruction from the Foreign Office to Mr. Watson of the 25th September last, a copy of which was communicated by that gentleman to this Department in his note of the 17th October, directs him to ascertain the views of this Government in regard to the extent of maritime jurisdiction which can properly be claimed by any Power, and whether we have ever recognized the claim of Spain to a 6-mile limit, or have ever protested against such claim.

Wharton's
"Digest," p. 108.

"In reply, I have the honour to inform you that this Government has uniformly, under every Administration which has had occasion to consider the subject, objected to the pretension of Spain adverted to, upon the same ground and in similar terms to those contained in the instruction of the Earl of Derby.

"We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond 1 marine league from its coast.

"This opinion on our part has sometimes been said to be inconsistent with the facts, that by the laws of the United States, revenue cutters are authorized to board vessels anywhere within 4 leagues of their coasts, and that, by the Treaty of Guadalupe Hidalgo, so called, between the United States and Mexico, of the 2nd February, 1848, the boundary-line between the dominions of the parties begins in the Gulf of Mexico, 3 leagues from land.

"It is believed, however, that in carrying into effect the authority conferred by the Act of Congress referred to, no vessel is boarded, if boarded at all, except such a one, as upon being hailed, may have answered that she was bound to a port of the United States. At all events, although the Act of Congress was passed in the infancy of this Government, there is no known instance of any complaint on the part of a foreign Government of the trespass by a commander of a revenue cutter upon the rights of its flag under the law of nations.

"In respect to the provision in the Treaty with Mexico, it may be remarked that it was probably suggested by the passage in the Act of Congress referred to, and designed for the same purpose, that of preventing smuggling. By turning to the files of your Legation you will find that Mr. Bankhead, in a note to Mr. Buchanan of the 30th April, 1848, objected, on behalf of Her Majesty's Government, to the provision in question. Mr. Buchanan, however, replied, in a note of the 19th August in that year, that the stipulation could only affect the rights of Mexico and the United States, and was never intended to trench upon the rights of Great Britain, or of any other Power, under the law of nations."

Mr. Fish, Secretary of State, wrote to the United States' Legation in Russia on the 1st December, 1875:—

Wharton's
"Digest," p. 108.

"There was reason to hope that the practice, which formerly prevailed with powerful nations, of regarding seas and bays, usually of large extent near their coast, as closed to any foreign commerce or fishery not specially licensed by them, was, without exception, a pretension of the past, and that no nation would claim exemption from the general rule of public law, which limits its maritime jurisdiction to 1 marine league from its coast. We should particularly regret if Russia should insist on any such pretension."

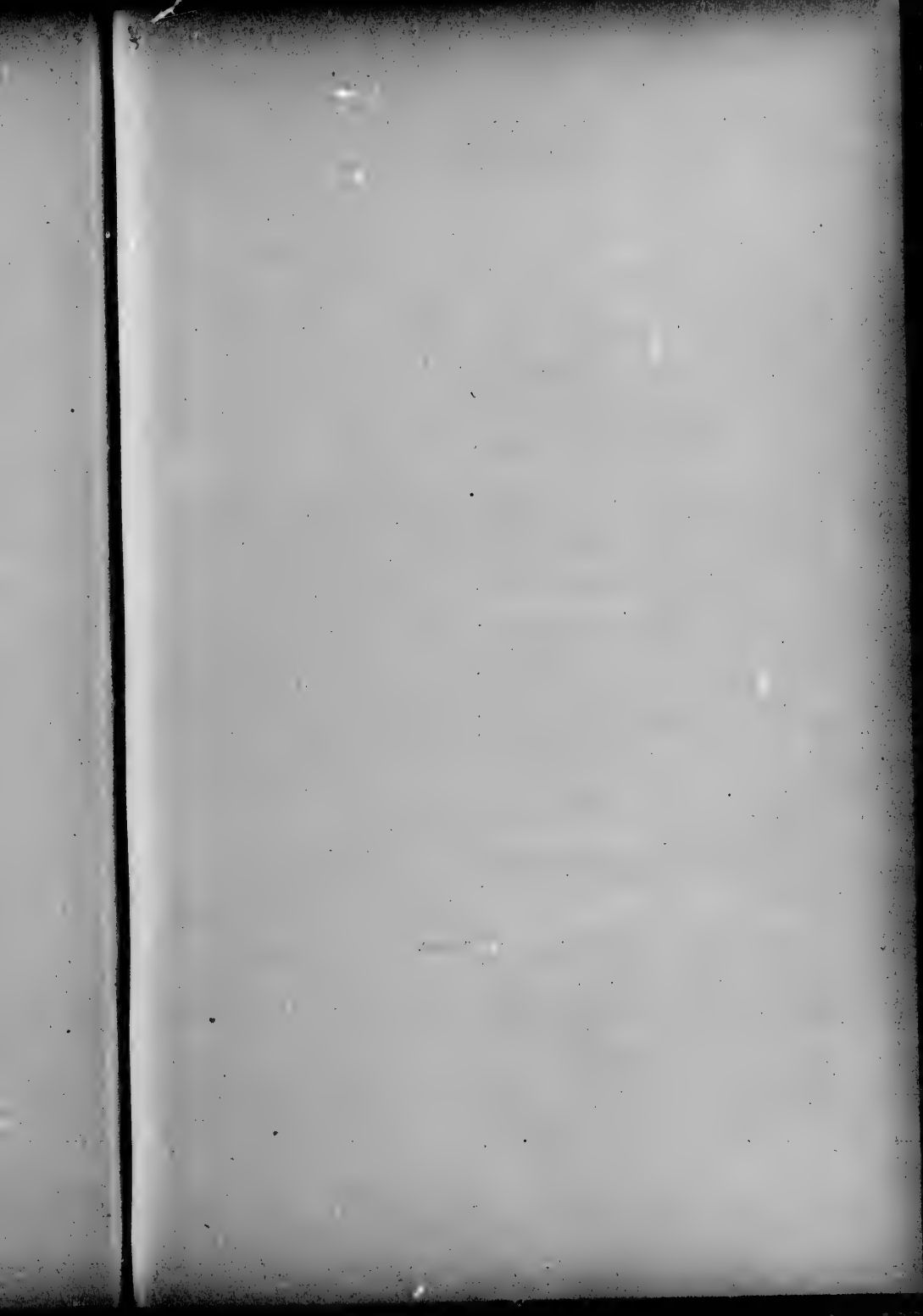
Dealing with the principle apparently put forward in Point 1 of this Convention, Mr. Seward, Secretary of State, writing to Mr. Tassara, 10th August, 1883:—

Ibid., p. 108.

"Nevertheless it cannot be admitted, nor, indeed, is Mr. Tassara understood to claim, that the mere assertion of a Sovereign by an act of legislation, however solemn, can have the effect to establish and fix its external maritime jurisdiction. His right to a jurisdiction of 3 miles is derived not from his own Decree, but from the law of nations, and exists even though he may never have proclaimed or asserted it by any Decree or declaration whatsoever. He cannot, by a mere Decree, extend the limit and fix it at 6 miles, because, if he could, he could in the same manner, and upon motives of interest, ambition, or even upon caprice, fix it at 10, or 20, or 50 miles, without the consent or acquiescence of other Powers which have a common right with himself in the freedom of all the oceans. Such a pretension could never be successfully or rightfully maintained."

English and
American
decisions.

The opinion of Lord Stowell, in the case of "Le Louis" (2 Dodson's Admiralty Reports, 210), may be referred to. There a French vessel, fitted out for the Slave Trade, and destined on a voyage to the coast of Africa and back to Martinique, was captured on the high seas by an English cutter and carried to Sierra Leone, an English Colony. She was proceeded against in the Vice-Admiralty Court of that Colony, upon a libel alleging that the captors were duly commissioned under Act of Parliament to make seizure; that the seizure was within the jurisdiction of the Court (it was, in fact, made 10 or 12 leagues off shore); that she was fitted out, manned, and navigated for the purpose of carrying on the African Slave Trade; and that she was



engaged in the Slave Trade, contrary to the laws of France and the laws of nations, and could derive no protection from the French or any other flag. There was no doubt that the Slave Trade anywhere was prohibited by Act of Parliament, and the Commission of the captor to seize was duly proved.

It was claimed on the part of the prosecution that, while admitting that the Courts of one country are not authorized to take cognizance of breaches of the mere municipal laws of another, yet that this was a case of a very different description, for here the Court was proceeding on a breach of a general law, and only looked to the law of the particular country of the vessel to see whether it afforded any protection to the offender; and it was urged to be most reasonable that the slave-dealer should be restrained by foreign cruisers, as well as by those of their own country; otherwise, an abolition in which all the great Powers of Europe had joined might be rendered perfectly illusory by the act of the pettiest State in the world, and peace in Europe would only be the signal for war in Africa.

But Mr. Lushington, for the owners, urged that the place of capture was as much removed from the local jurisdiction of Great Britain as the middle of the Baltic Sea or the Atlantic Ocean, and that the claim of the Government amounted to this—that there existed a right of search during peace. If such a right existed at all, it must be founded on public law, or upon express Treaty; if upon public law, the right must be shown necessarily to arise from some principle admitting of no dispute.

Such being the case, and the opposing contentions presented, Lord Stowell, in his opinion, declared:—

"Upon the first question, whether the right of search exists in time of peace, I have to observe that two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct States. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbour, and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law which it mainly concerns the peace of mankind both in their politic and private capacities to preserve inviolate. The second is, that all nations being

Page 248.

equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all States meet upon a footing of entire equality and independence, no one State or any of its subjects has a right to assume or exercise authority over the subjects of another. I can find no authority that gives the right of interruption to the navigation of States in amity upon the high seas excepting that which the rights of war give to both belligerents against neutrals."

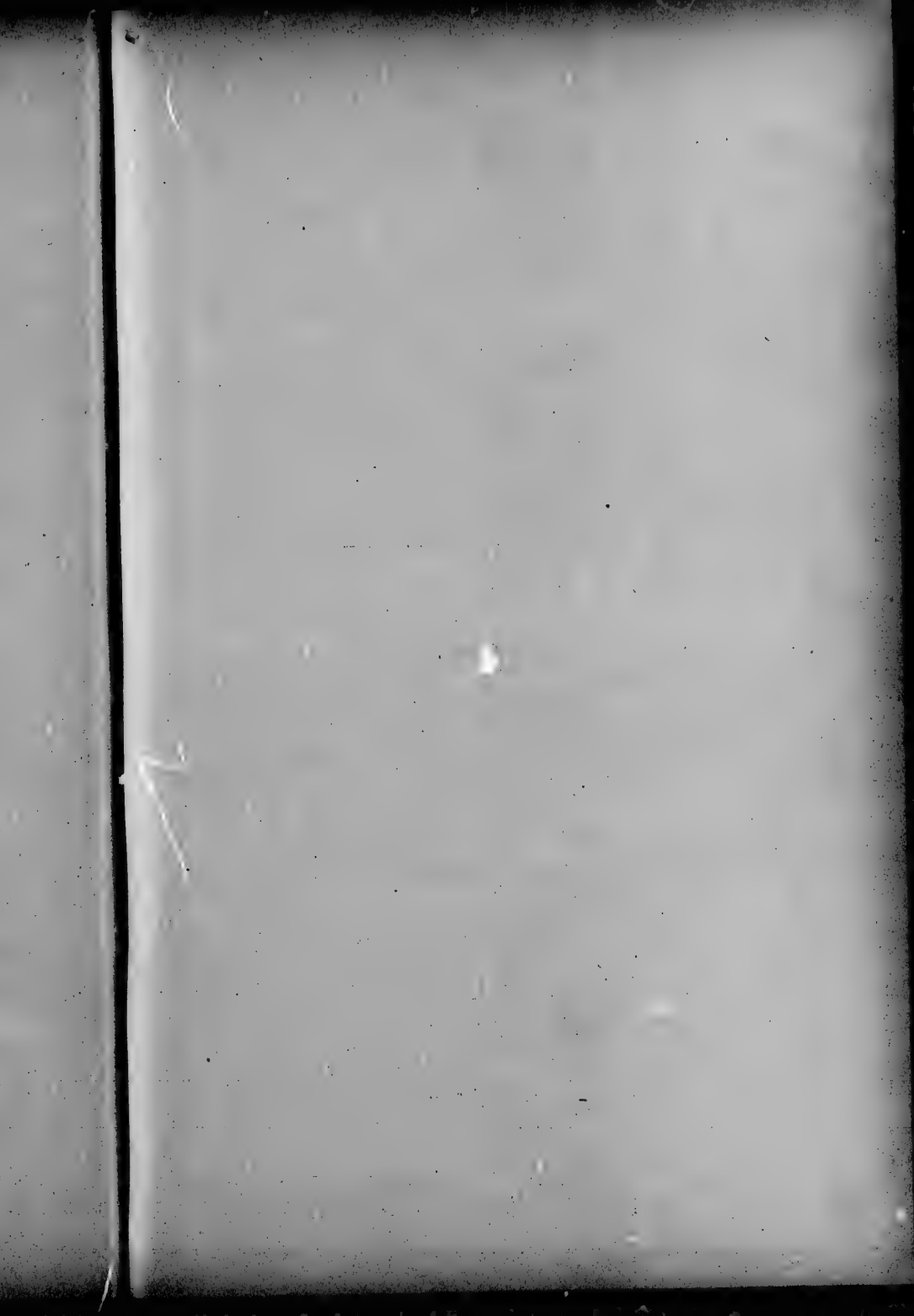
After showing how piracy, being an offence against all nations and the law of nations, was punishable anywhere, he says:—

"It is true that wild claims have been occasionally set up by nations, particularly those of Spain and Portugal, in the East and West Indian seas; but these are claims of a nature quite foreign to the present question, being claims not of a general right of visitation and search upon the high seas unappropriated, but extravagant claims to the appropriation of particular seas founded upon some grounds of a pretended authority, or upon some ancient, exclusive usurpation.

"But unless slavery could be pronounced as legal piracy, some new ground must be assumed on which the right of seizure claimed could be supported; that Slave Trade was not piracy, nor was it unquestionably and legally criminal by the universal law of nations; that the Court must conform to the judgment of the law upon the subject, and acting as a Court in the administration of law it cannot attribute criminality to an act while the law imputes none; that it must look to the legal standard of morality, and upon a question of this nature that standard must be found in the law of nations as fixed by general and ancient and admitted practices by Treaties, and by the general tenour of the laws and ordinances, and the formal transactions of civilized States, and looking to those authorities he found it difficult to maintain that the Traffic in Slaves was legally criminal; that the law of nations had not declared the Slave Trade to be unlawful or criminal."

And after referring to the enormity of the Traffic, and to the extreme utility and necessity of its suppression and the difficulty of such suppression, unless such seizures were held to be authorized, he concludes:—

"But the difficulty of the attainment will not legalize measures that are otherwise illegal. To press forward to a great principle by breaking through every other great principle that stands in the way of its establishment to force the way to the liberation of *Africa* by trampling upon the independence of other States in *Europe*, in short,



to procure an eminent good by means that are unlawful, is as little consonant to private morality as to public justice. Obtain the concurrence of other nations if you can by application, by remonstrance, by example, by every peaceable instrument which man can employ to attract the consent of man, but a nation is not justified in assuming rights that do not belong to her merely because she means to apply them to a laudable purpose, nor in setting out upon a moral crusade of converting other nations by acts of unlawful force, nor is it to be argued that because other nations approve the ultimate purpose they must, therefore, submit to every measure which any one State or its subjects may inconsiderately adopt for its attainment. . . .

"If it [the exercise of the right of seizure] be assumed by force and left at large to operate reciprocally upon the ships of every State (for it must be a right of all against all), without any other limits as to time, place, or mode of inquiry, then such is the pretence in each instance as particular States or their individual subjects may impose, I leave the tragedy contained in this case to illustrate the effects that are likely to arise in the very first stages of the process without adding to the account what must be considered as a most awful part of it, the perpetual irritation and the universal hostility which are likely to ensue."

"Neither this Court nor any other can carry its private Page 249. apprehensions, independent of law, into its public judgments on the quality of actions. It must conform to the judgment of the law upon that subject, and, acting as a Court in the administration of law, it cannot attribute criminality to an act where the law imputes none. It must look to the legal standard of morality, and, upon a question of this nature, that standard must be found in the law of nations, as fixed and evidenced by general and ancient and admitted practice, by Treaties, and by the general tenor of the laws and ordinances and the formal transactions of civilized States."

"... Much stress is laid upon a solemn declaration of Page 252. very eminent persons assembled in Congress, whose rank, high as it is, is by no means the most respectable foundation of the weight of their opinion that this Traffic is contrary to all religion and morality. Great as the reverence due to such authorities may be, they cannot, I think, be admitted to have the force of overruling the established course of the general law of nations."

"A country has right to enforce its navigation laws so Page 253. long as does not interfere with rights of others, no right, in consequence, to visit and search all the apparent vessels of other countries in high seas."

"It is said, and with just concern, that, if not permitted Page 254. in time of peace, it will be extremely difficult to suppress the Traffic. It will be so, and no man can deny that the suppression, however desirable and however sought, is attended with enormous difficulties, difficulties which have

baffled the most zealous endeavours for many years. To every man it must have been evident that, without a general and sincere concurrence of all the Maritime States in the principle and in the proper modes of pursuing it, comparatively but little of positive good could be acquired, so far, at least, as the interests of the victims of this commerce were concerned in it; and to every man who looks to the rival claims of these States, to their established habits of trade, to their real or pretended wants, to their different modes of thinking, and to their real mode of acting upon this particular subject, it must be equally evident that such a concurrence was matter of very difficult attainment. But the difficulty of the attainment will not legalize measures that are otherwise illegal. To press forward to a great principle by breaking through every other great principle that stands in the way of its establishment, to force the way to the liberation of Africa by trampling on the independence of other States in Europe; in short, to procure an eminent good by means that are unlawful is as little consonant to private morality as to public justice. Obtain the concurrence of other nations, if you can, by application, by remonstrance, by example, by every peaceable instrument which man can employ to attract the consent of man. But a nation is not justified in assuming rights that do not belong to her merely because she means to apply them to a laudable purpose, nor in setting out upon a moral crusade of converting other nations by acts of unlawful force. Nor is it to be argued that because other nations approve the ultimate purpose they must therefore submit to every measure which any one State or its subjects may inconsiderately adopt for its attainment."

Page 287.

"The practice of visitation and search during peace is likely to produce great mischiefs."

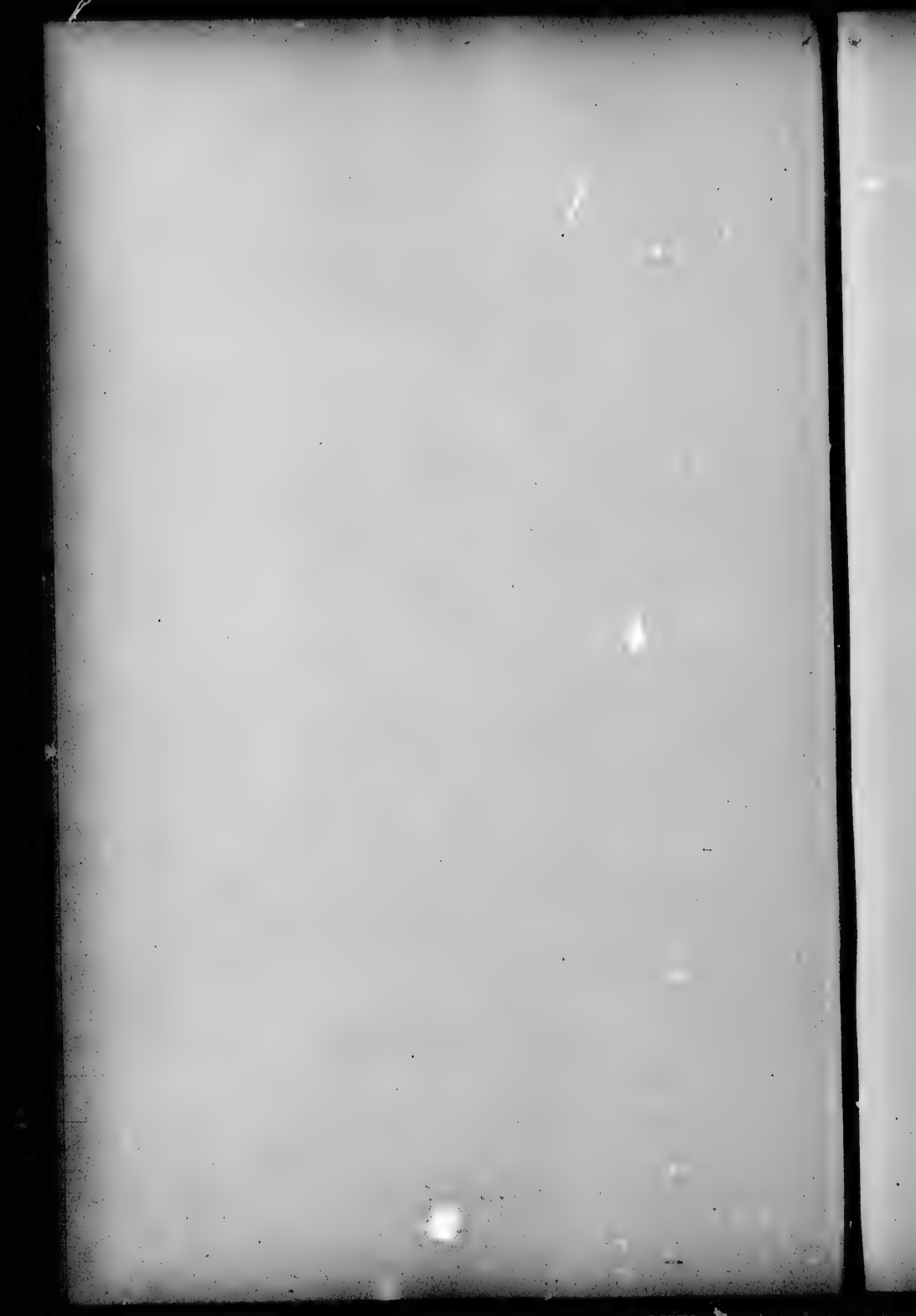
The Judgment of the Vice-Admiralty Court of Sierra Leone, condemning the French ship for being employed in the Slave Trade and for forcibly resisting the search of the King of England's cruisers, was reversed by the above Judgment.

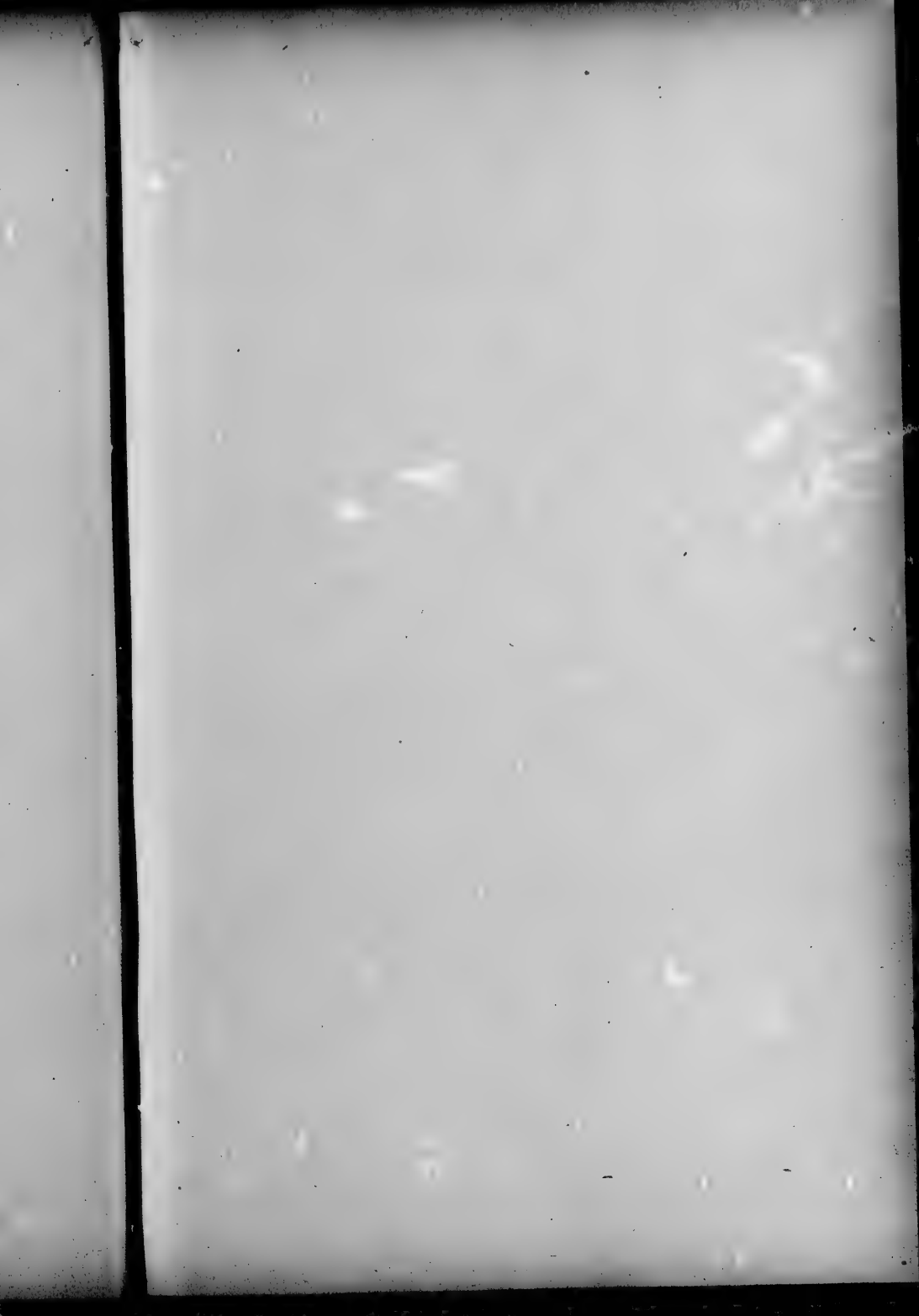
The Judge remarked that this was "the first case of the kind."

10 Wheaton, 66.

The decision of the Supreme Court of the United States in the case of the "Antelope" is to the same effect. There Chief Justice Marshall delivered the opinion of the Court, holding that the Slave Trade, though contrary to the law of nature, was not in conflict with the law of nations:—

"No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another; each legislates for itself, but its legislation can





operate on itself alone. A right, then, which is vested in all by the consent of all, can be divested only by consent; and this trade, in which all have participated, must remain lawful to those who cannot be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations, and this traffic remains lawful to those whose Governments have not forbidden it.

"If it is consistent with the law of nations, it cannot, in itself, be piracy. It can be made so only by Statute, and the obligation of the Statute cannot transcend the legislative power of the State which may enact it.

"If it be neither repugnant to the law of nations nor piracy, it is almost superfluous to say in this Court that the right of bringing in for adjudication in time of peace, even where the vessel belongs to a nation which has prohibited the trade, cannot exist. The Courts of no country execute the penal laws of another, and the course of the American Government on the subject of visitation and search would decide any case in which that right had been exercised by an American cruiser on the vessel of a foreign nation not violating our municipal laws against the captors.

"It follows that a foreign vessel engaged in the African Slave Trade, captured on the high seas in time of peace by an American cruiser and brought in for adjudication, would be restored."

The whole subject is fully disposed of in Mr. Dana's note No. 108 to Wheaton (p. 258), where it is said of Chief Justice Marshall, in *Church against Hubbard*, 2 Cranch, 187:—

"It is true that Chief Justice Marshall admitted the right of a nation to secure itself against intended violations of its laws by seizures made within reasonable limits, as to which, he said, nations must exercise comity and concession and the exact extent of which was not settled, and in the case before the Court the 4 leagues were not treated as rendering the seizure illegal. This remark must now be treated as an unwarranted admission. . . .

It may be said that the principle is settled that municipal seizures cannot be made for any purpose beyond territorial waters. It is also settled that the limit of these waters is, in the absence of Treaty, the marine league or the cannon-shot. It cannot now be successfully maintained either that municipal visits and search may be made beyond the territorial waters for special purposes, or that there are different points of that territory for different objects; but as the line of territorial waters, if not fixed, is dependent on the unsettled range of artillery fire, and if fixed must be by an arbitrary measure, the Courts in the earlier cases were not strict as to standard of distance *where no foreign Powers intervened in the cause*. In later times, it is safe to infer that judicial as well as political Tribunals will insist on one line of marine territorial jurisdiction for the exercise of force on foreign vessels in time of peace for all purposes alike."

The United States' position in 1877 as
to marine league.

Expositions of the Law of England as to what are territorial waters, and as to the extent of jurisdiction, for any purposes, beyond low-water mark, will be found in the case of the "*Franconia*," decided in November 1876 before all the Judges of England. *Queen v. Keyn*, L. R., 2 Exch. Div. 68.

The opinions of the different Judges were said by the Agent of the United States before the Halifax Fisheries Commission (from whose brief many of the following authorities are reproduced) to be a "repertory of nearly all the learning, ancient and modern, English, American, and Continental, which could be collected from treatises and reports." The question was whether the criminal jurisdiction of England extended to a crime committed by a foreigner on a foreign vessel, within 3 miles of the English coast.

The following authorities were relied upon by the United States before the Halifax Commission.

Sir Robert Phillimore:—

"Whatever may have been the claims asserted by nations in times past, and perhaps no nation has been more extravagant than England in this matter, it is at the present time an unquestionable proposition of international jurisprudence, that the high seas are of right navigable by the ships of all States. . . .

"The question as to dominion over portions of the seas inclosed within headlands or contiguous shores, such as the King's Chambers, is not now under consideration. It is enough to say that within this term 'territory' are certainly comprised the ports and harbours, and the space between the flux and reflux of tide, or the land up to the furthest point at which the tide recedes.

"With respect to the second question, the distance to which the territorial waters extend, it appears, on an examination of the authorities, that the distance has varied (setting aside even more extravagant claims) from 100 to 3 miles, the present limit. . . .

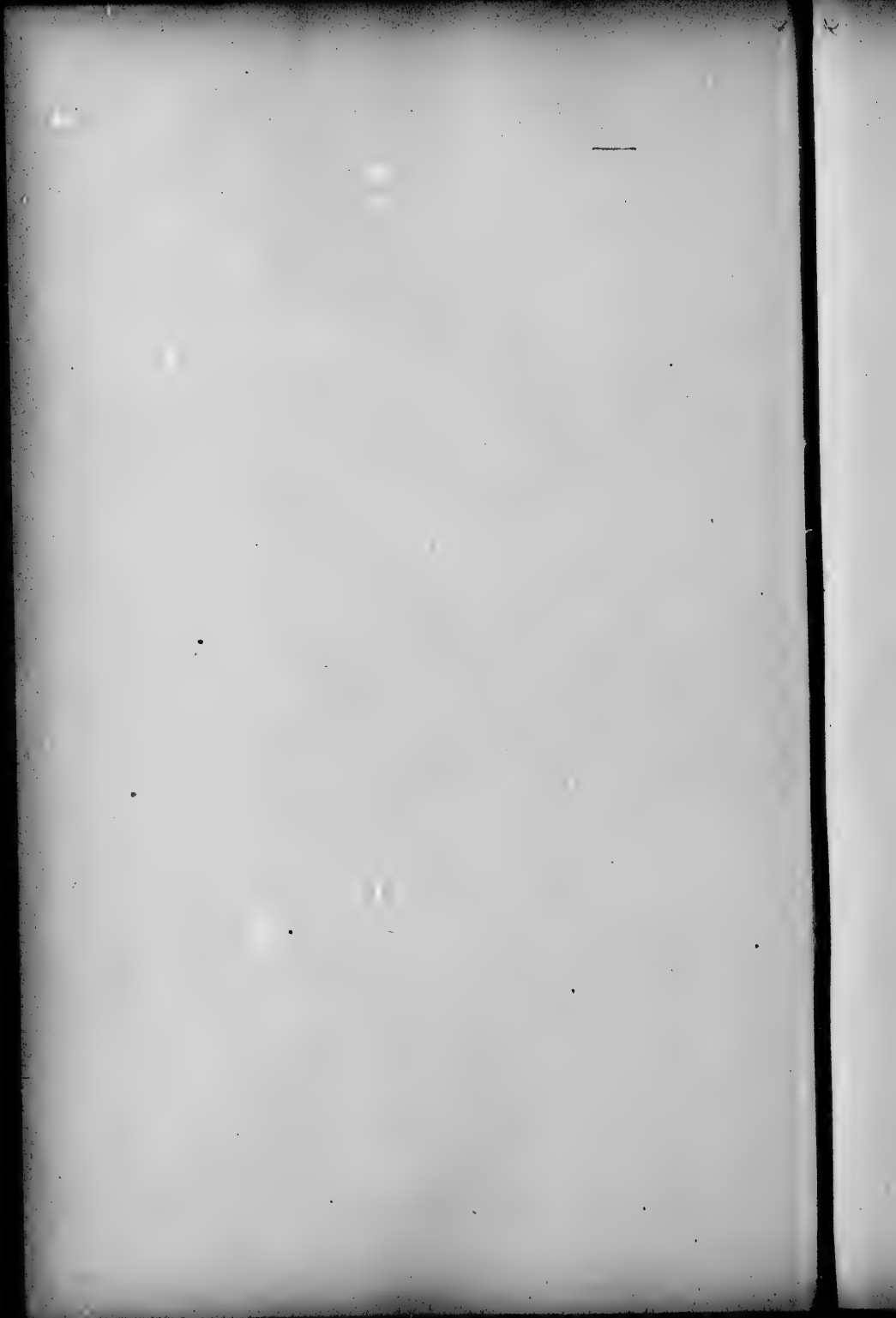
"The sound conclusions which result from the investigations of the authorities which have been referred to appear to me to be these:—

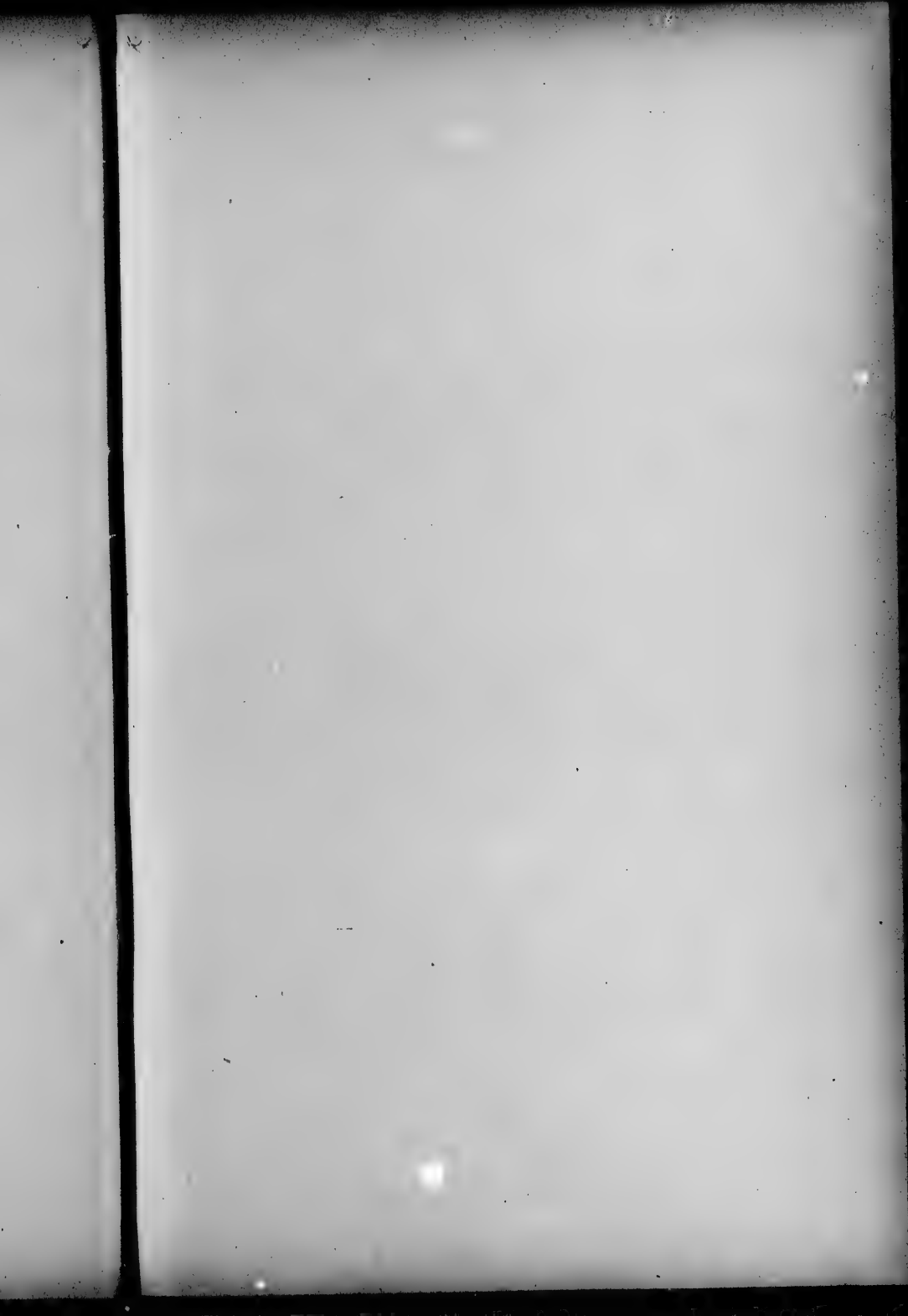
"The consensus of civilized, independent States has recognised a maritime extension of frontier to the distance of 3 miles from low-water mark, because such a frontier, or belt of water, is necessary for the defence and security of the adjacent State.

"It is for the attainment of these particular objects that a dominion has been granted over this portion of the high seas."

Lindley, J., expressed himself as follows:—

"The controversy between Grotius, in his '*Mare Liberum*,' and Selden, in his '*Mare Clausum*,' has been





observed upon by almost every writer on international law since their day, and the result has been that, whilst the extravagant propositions contended for by each of these celebrated men have been long ago exploded, it appears to me to be now agreed, by the most esteemed writers on international law, that, subject to the right of all ships freely to navigate the high seas, every State has full power to enact and enforce what laws it thinks proper for the preservation of peace and the protection of its own interests over those parts of the high seas which adjoin its own coasts, and are within 3 miles thereof; but that beyond this limit, or, at all events, beyond the reach of artillery on its own coasts, no State has any power to legislate, save over subjects and over persons on board ships carrying its flag.

"It is conceded that, even in time of peace, the territoriality of a foreign merchant-ship, within 3 miles of the coast of any State, does not exempt that ship or its crew from the operation of those laws of that State which relate to its revenue or fisheries."

Grove, J. :—

"The proposition that a belt or zone of 3 miles of sea surrounding or washing the shores of a nation—what is termed 'territorial water'—is the property of that nation, as a river flowing through its land would be, or, if not property, is subject to its jurisdiction and law, is not in its terms of ancient date; but this defined limit, so far, at least, as a maritime country like England is concerned, is rather a restriction than an enlargement of its earlier claims, which were at one time sought to be extended to a general dominion on the sea, and, subsequently, over the channels between it and other countries, or, as they were termed, 'the narrow seas.' The origin of the 3-mile zone appears undoubted. It was an assumed limit to the range of cannon—an assumed distance at which a nation was supposed able to exercise dominion from the shore."

"The principal authorities may be conveniently arranged as follows :—

"1. Those who affirm the right, in what are generally termed 'territorial waters,' to extend, at least, to the distance at which it can be commanded from the shore, or as far as arms can protect it.

"2. Those who, assigning the same origin to the right, recognized it as being fixed at 1 marine league, or 3 geographical miles, from the shore.

"3. Those who affirm the right to be absolute, and the same as over an inland lake, or (allowing for the difference of the subject-matter) as over the land itself.

"4. Those who regard the right as qualified, and the main if not only qualification that seems to me fairly deducible from the authorities is, that there is a right of transit or passage, and, as incident thereto, possibly a right of anchorage when safety or convenience of navigation requires it, in the territorial waters, for foreign ships.

"Puffendorf, Bynkershoek, Casaregis, Moser, Azuni, Klüber, Wheaton, Hautefeuille, and Kaltenborn, though

not all placing the limit of territorial jurisdiction at the same distance from the shore, none of them fix it at a smaller distance than a cannon-shot, or as far off as arms can command it. They also give no qualification to the jurisdiction, but seem to regard it as if (having regard to the difference of land and water) it were an absolute territorial possession. Chancellor Kent seems also to recognize an exclusive dominion. Hautefeuille speaks of the power of a nation to exclude others from the parts of the sea which wash its territory, and to punish them for infraction of its laws, and this as if it were dealing with its land dominion.

"Wheaton, Calvo, Halleck, Massey, Bishop, and Manning give the limit as 1 marine league, or 3 miles. Heffter mentions this limit, but says it may be extended. Ortolan, Calvo, and Massé put the right as one of jurisdiction, and not of property, but do not limit it further than that the former writer says that the laws of police and surety are there obligatory, and Massé also writes of police jurisdiction. Bluntschli says the territorial waters are subject to the military and police authorities of the place. Faustin Hélie speaks of crimes in these waters coming within the jurisdiction of the Tribunals of the land to which they belong. Unless these words, 'military, police, and surety,' be taken to impose a limit, no limit to the jurisdiction of a country over its territorial waters, beyond a right of passage for foreign ships, is mentioned, as far as I could gather from the numerous authorities cited, except by Mr. Manning, who confines it (though not by words expressly negating other rights) to fisheries, customs, harbours, lighthouses, dues, and protection of territory during war. Grotius, Ortolan, Bluntschli, Schmaltz, and Massé consider there is a right of peaceable passage for the ships of other nations, and Vattel says that it is the duty of nations to permit this, but seems to think that, as a matter of absolute right, they may prohibit it.

"Such are the conclusions of the principal publicists, most of whom are of very high authority on questions of international law.

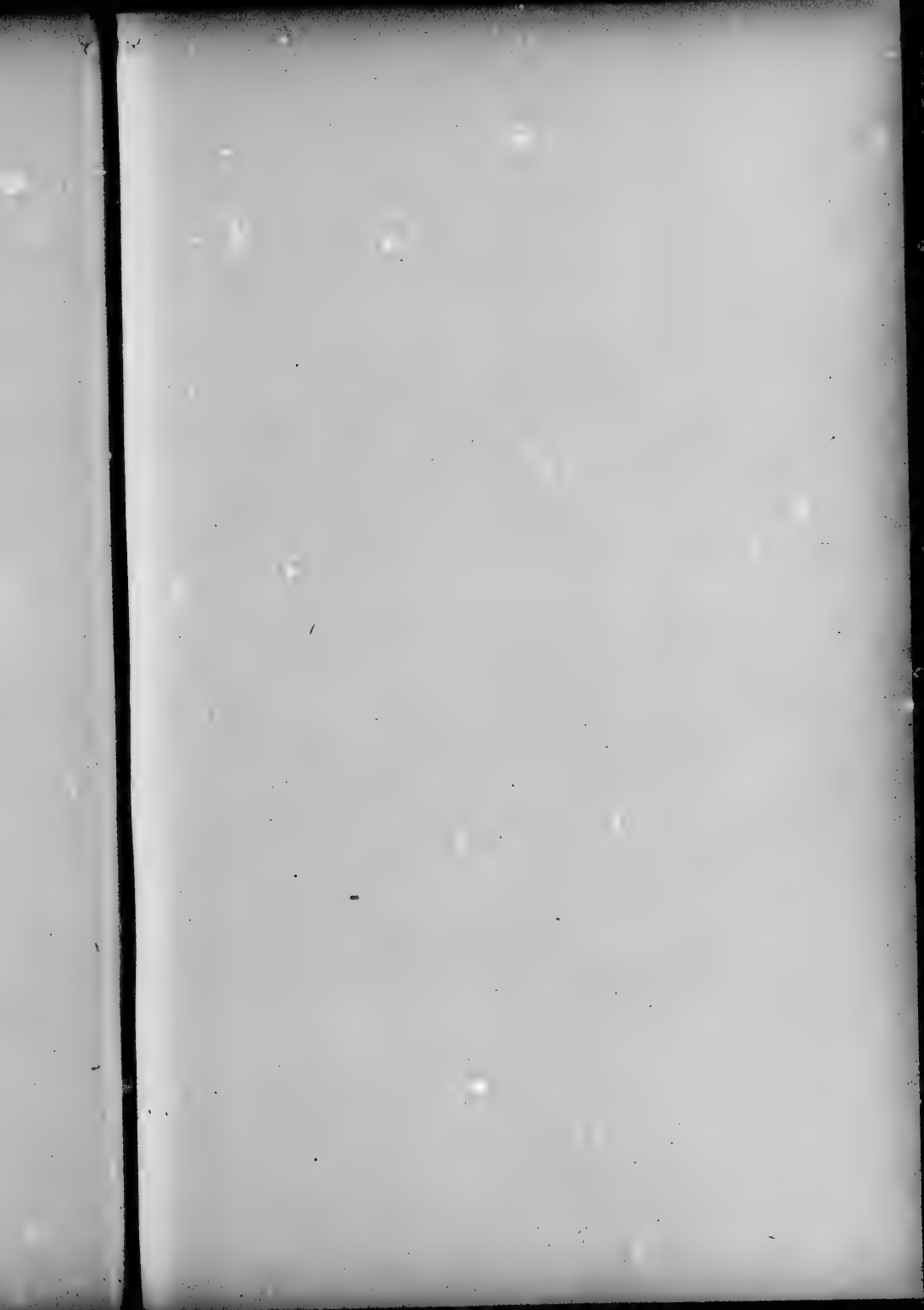
"The result of them is to show that, as in the case of many other rights, a territorial jurisdiction over a neighbouring belt of sea had its origin in might, its limits being at first doubtful and contested, but ultimately, by a concession or comity of nations, it became fixed at what was for a long time the supposed range of a cannon-shot, viz., 3 miles' distance.

"In addition to the authority of the publicists, this 3-mile range, if not expressly recognized as an absolute boundary by international law, is yet fixed on, apparently without dispute, in Acts of Parliament, in Treaties, and in Judgments of Courts of Law in this country and America."

Brett, J., uses the following language:—

"What are the limits of the realm should, in general, be declared by Parliament. Its declaration would be conclusive, either as authority or evidence. But, in this case

UNIVERSITY OF
MICHIGAN
PUBLIC LIBRARY



of the open sea, there is no such declaration; and the question is in this case necessarily left to the Judges, and to be determined on other evidence or authority. Such evidence might have consisted of proof of a continuous public claim by the Crown of England, enforced, when practicable, by arms, but not consented to by other nations. I should have considered such proof sufficient for English Judges. In England, it cannot be admitted that the limits of England depend on the consent of any other nation. But no such evidence was offered. The only evidence suggested in this case is that, by law of nations, every country bordered by the sea is to be held to have, as part of its territory (meaning thereby a territory in which its law is paramount and exclusive), the 3 miles of open sea next to its coast; and, therefore, that England, among others, has such territory. The question on both sides has been made to depend on whether such is or is not proved to be the law of nations.

"I cannot but think, therefore, that substantially all the foreign jurists are in accord in asserting that, by the common consent of all nations, each which is bordered by an open sea has over 3 adjacent miles of it a territorial right. And the sense in which they all use that term seems to me to be fully explained by Vattel (lib. i. c. 18, § 205). He says:—

"*'Lorsqu'une nation s'empare d'un pays qui n'appartient encore à personne, elle est censée y occuper l'empire, ou la souveraineté, en même temps que le domaine. Tout l'espace dans lequel une nation étend son empire forme le ressort de sa juridiction, et s'appelle son territoire.'* At lib. ii, § 84: '*L'empire, uni au domaine, établit la juridiction de la nation dans le pays qui lui appartient, dans son territoire.'*

"This seems plain: sovereignty and dominion necessarily give or import jurisdiction, and do so throughout the territory.

"Applying this to the territorial sea, at lib. i. c. 23, § 295, he says:—

"*'Quand une nation s'empare de certaines parties de la mer, elle y occupe l'empire aussi bien que le domaine, &c. Ces parties de la mer sont de la juridiction du territoire de la nation. Le Souverain y commande; il y donne des lois, et peut réprimer ceux qui les violent; en un mot, il y a tous les mêmes droits qui lui appartiennent sur la terre; &c.'*

"It seems to me that this is, in reality, a fair representation of the accord or agreement of substantially all the foreign writers on international law; and that they all agree in asserting that, by the consent of all nations, each which is bordered by open sea has a right over such adjacent sea as a territorial sea—that is to say, as a part of its territory; and that they all mean thereby to assert that it follows, as a consequence of such sea being a part of its territory, that each such nation has, in general, the same right to legislate and to enforce its legislation over that part of the sea as it has over its land territory.

"Considering the authorities I have cited, the terms used by them,—wholly inconsistent, as it seems to me,

with the idea that the adjacent country has no property, no dominion, no sovereignty, no territorial right,—and considering the necessary foundation of the admitted rights and duties of the adjacent country as to neutrality, which have always been made to depend on a right and duty as to its territory, I am of opinion that it is proved that, by the law of nations, made by the tacit consent of substantially all nations, the open sea within 3 miles of the coast is a part of the adjacent nation as much and as completely as if it were land, and a part of the territory of such nation. By the same evidence which proves this proposition, it is equally proved that every nation which possesses this water territory has agreed with all other nations that all shall have the right of free navigation to pass through such water territory, if such navigation be with an innocent or harmless intent or purpose. The right of free navigation cannot, according to ordinary principles, be withdrawn without common consent; but it by no means derogates from the sovereign authority over all its territory of the State which has agreed to grant this liberty, or easement, or right, to all the world."

Lord Chief Justice Cockburn delivered the Judgment of the Court, from which the following passages are extracted:—

"By the old common law of England, every offence was triable in the county only in which it had been committed; as, from that county alone, the '*pais*,' as it was termed—in other words, the jurors by whom the fact was to be ascertained—could come. But only so much of the land of the outer coast as was uncovered by the sea was held to be within the body of the adjoining county. If an offence was committed in a bay, gulf, or estuary, *inter fauces terre*, the common law could deal with it, because the parts of the sea so circumstanced were held to be within the body of the adjacent county or counties; but along the coast, on the external sea, the jurisdiction of the common law extended no further than to low-water mark.

"The jurisdiction of the Admiral, however largely asserted in theory in ancient times, being abandoned as untenable, it becomes necessary for the Counsel for the Crown to have recourse to a doctrine of comparatively modern growth, namely, that a belt of sea, to a distance of 3 miles from the coast, though so far a portion of the high seas as to be still within the jurisdiction of the Admiral, is part of the territory of the realm, so as to make a foreigner in a foreign ship within such belt, though on a voyage to a foreign port, subject to our law, which it is clear he would not be on the high sea beyond such limit. It is necessary to keep the old assertion of jurisdiction and that of to-day essentially distinct; and it should be borne in mind, that it is because all proof of the actual exercise of any jurisdiction by the Admiral over foreigners in the narrow seas totally fails, that it becomes necessary to give to the 3-mile zone the character of territory, in order to make good the assertion of jurisdiction over the foreigner therein.



"Now, it may be asserted, without fear of contradiction, that the position that the sea within the belt or zone of 3 miles from the shore, as distinguished from the rest of the open sea, forms part of the realm or territory of the Crown, as a doctrine unknown to the ancient law of England, and which has never yet received the sanction of an English Criminal Court of Justice. It is true that, from an early period, the Kings of England, possessing more ships than their opposite neighbours, and being thence able to sweep the Channel, asserted the right of sovereignty over the narrow seas, as appears from the Commissions issued in the fourteenth century, of which examples are given in the 4th Institute, in the chapter on the Court of Admiralty, and others are to be found in Selden's '*Mare Clausum*,' Book 2. At a later period, still more extravagant pretensions were advanced. Selden does not scruple to assert the sovereignty of the King of England over the sea as far as the shores of Norway, in which he is upheld by Lord Hale in his treatise '*De Jure Maris*.' (Hargrave's Law Tracts, p. 10.)

"All these vain and extravagant pretensions have long since given way to the influence of reason and common sense. If, indeed, the sovereignty thus asserted had a real existence, and could now be maintained, it would, of course, independently of any questions as to the 3-mile zone, be conclusive of the present case. But the claim to such sovereignty, at all times unfounded, has long since been abandoned. No one would now dream of asserting that the Sovereign of these realms has any greater right over the surrounding seas than the Sovereigns on the opposite shores; or that it is the especial duty and privilege of the Queen of Great Britain to keep the peace in these seas, or that the Court of Admiralty could try a foreigner for an offence committed in a foreign vessel in all parts of the Channel.

"The *consensus* of jurists, which has been so much insisted on as authority, is perfectly unanimous as to the non-existence of any such jurisdiction. Indeed, it is because this claim of sovereignty is admitted to be untenable that it has been found necessary to resort to the theory of the 3-mile zone. It is in vain, therefore, that the ancient assertion of sovereignty over the narrow seas is invoked to give countenance to the rule now sought to be established, of jurisdiction over the 3-mile zone. If this rule is to prevail, it must be on altogether different grounds. To invoke as its foundation, or in its support, an assertion of sovereignty, which, for all practical purposes, is, and always has been, idle and unfounded, and the invalidity of which renders it necessary to have recourse to the new doctrine, involves an inconsistency on which it would be superfluous to dwell. I must confess myself unable to comprehend how, when the ancient doctrine as to sovereignty over the narrow seas is adduced, its operation can be confined to the 3-mile zone. If the argument is good for anything, it must apply to the whole of the surrounding seas. But the Counsel for the Crown evidently shrank from applying it to this extent. Such a pretension would not be admitted or endured by

foreign nations. That it is out of this extravagant assertion of sovereignty that the doctrine of the 3-mile jurisdiction, asserted on the part of the Crown, and which, the older claim being necessarily abandoned, we are now called upon to consider, has sprung up, I readily admit.

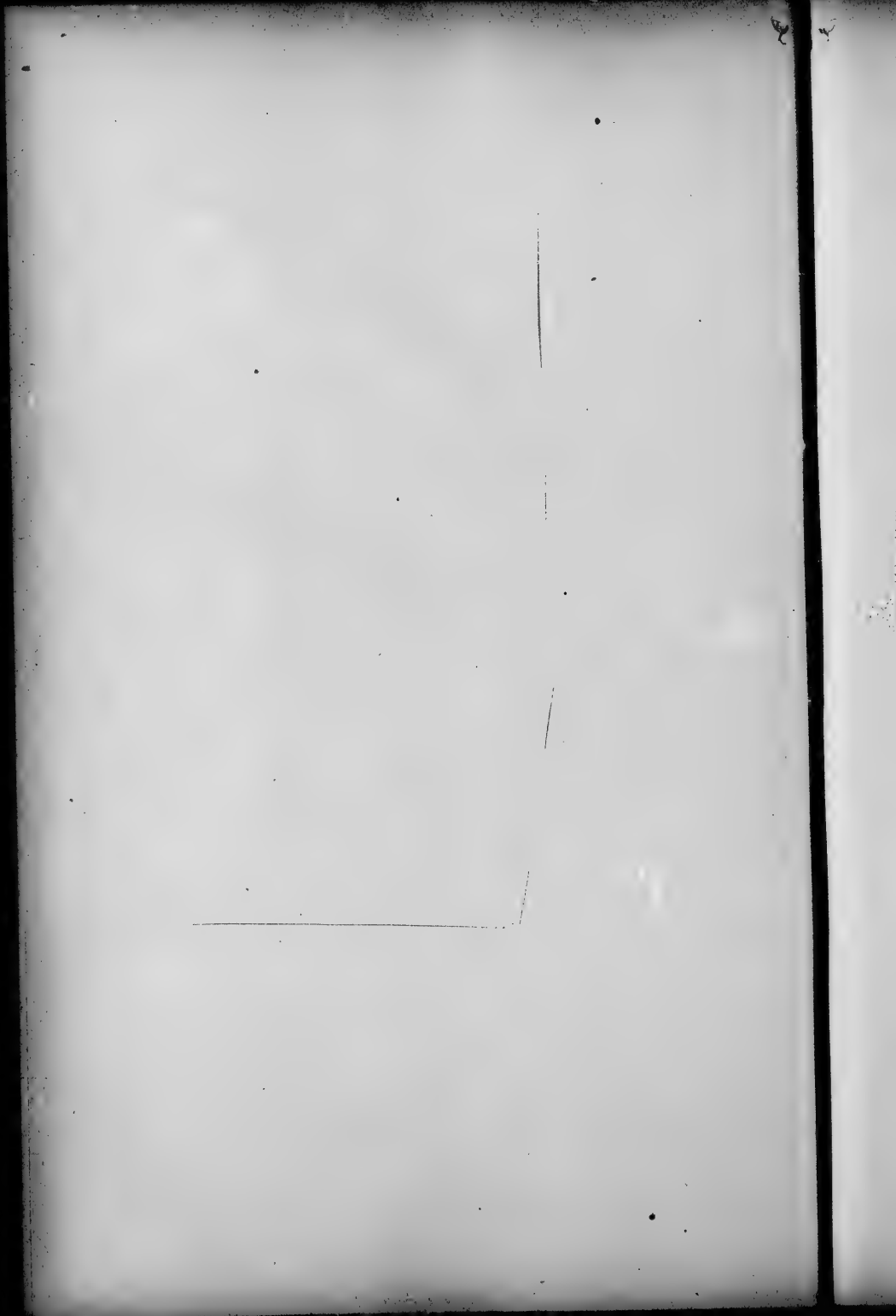
"From the review of these authorities, we arrive at the following results. There can be no doubt that the suggestion of Bynkershoek, that the sea surrounding the coast to the extent of cannon-range should be treated as belonging to the State owning the coast, has, with but very few exceptions, been accepted and adopted by the publicists who have followed him during the last two centuries. But it is equally clear that, in the practical application of the rule in respect of the particular of distance, as also in the still more essential particular of the character and degree of sovereignty and dominion to be exercised, great difference of opinion and uncertainty have prevailed, and still continue to exist.

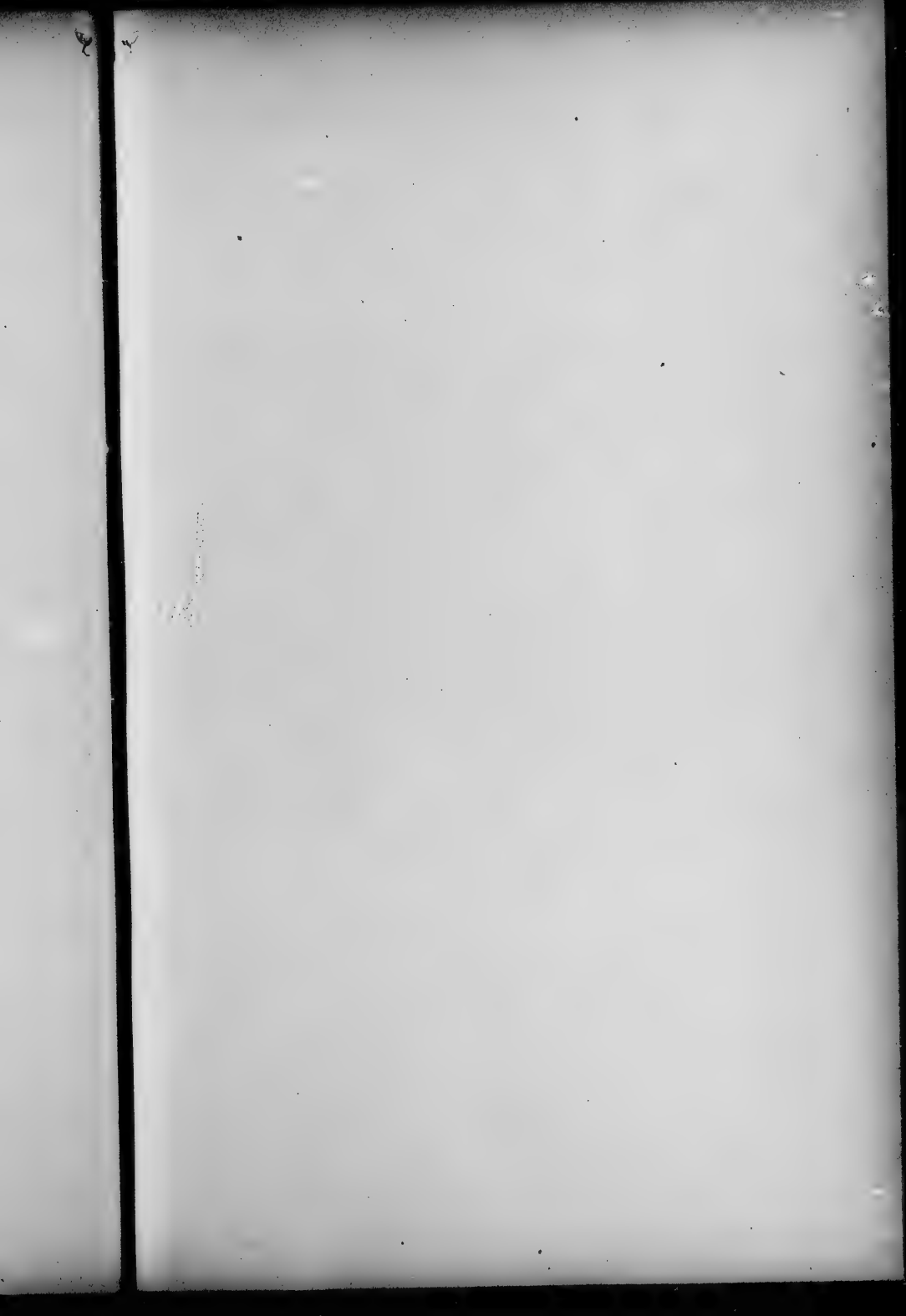
"As regards distance, while the majority of authors have adhered to the 3-mile zone, others, like M. Ortolan and Mr. Halleck, applying with greater consistency the principle on which the old doctrine rest, insist on extending the distance to the modern range of cannon—in other words, doubling it. This difference of opinion may be of little practical importance in the present instance, inasmuch as the place at which the offence occurred was within the lesser distance; but it is, nevertheless, not immaterial, as showing how unsettled this doctrine still is. The question of sovereignty, on the other hand, is all-important. And here we have every shade of opinion.

"One set of writers—as, for instance, M. Hautefeuille—ascrbe to the State territorial property and sovereignty over the 3 miles of sea, to the extent of the right of excluding the ships of all other nations, even for the purpose of passage,—a doctrine flowing immediately from the principle of territorial property, but which is too monstrous to be admitted. Another set concede territorial property and sovereignty, but make it subject to the right of other nations to use these waters for the purpose of navigation. Others, again, like M. Ortolan and M. Calvo, deny any right of territorial property, but concede 'jurisdiction'; by which I understand them to mean the power of applying the law, applicable to persons on the land, to all who are within the territorial water, and the power of legislating in respect of it, so as to bind every one who comes within the jurisdiction, whether subjects or foreigners. Some, like M. Ortolan, would confine this jurisdiction to purposes of 'safety and police'; by which I should be disposed to understand measures for the protection of the territory, and for the regulation of the navigation and the use of harbours and roadsteads, and the maintenance of order among the shipping therein, rather than the general application of the criminal law.

"Other authors—for instance, Mr. Manning—would restrict the jurisdiction to certain specified purposes in which the local State has an immediate interest; namely, the protection of its revenue and fisheries, the exacting of

" First, then, let us see how the matter stands as regards Treaties. It may be asserted, without fear of contradiction, that the rule that the sea surrounding the coast is to be treated as a part of the adjacent territory, so that the State shall have exclusive dominion over it, and that the law of the latter shall be generally applicable to those passing over it in the ships of other nations, has never been made the subject-matter of any Treaty, or, as matter of acknowledged right, has formed the basis of any Treaty, or has even been the subject of diplomatic discussion. It has been entirely the creation of the writers on international law. It is true that the writers who have been cited constantly refer to Treaties in support of the doctrine they assert. But when the Treaties they refer to are looked at, they will be found to relate to two subjects





only—the observance of the rights and obligations of neutrality and the exclusive right of fishing. In fixing the limits to which these rights should extend, nations have so far followed the writers on international law as to adopt the 3-mile range as a convenient distance. There are several Treaties by which nations have engaged, in the event of either of them being at war with a third, to treat the sea within 3 miles of each other's coasts as neutral territory, within which no warlike operations should be carried on: instances of which will be found in the various Treaties on international law.

"Again, nations possessing opposite or neighbouring coasts, bordering on a common sea, have sometimes found it expedient to agree that the subjects of each shall exercise an exclusive right of fishing to a given distance from their own shores, and here also have accepted the 3 miles as a convenient distance. Such, for instance, are the Treaties made between this country and the United States in relation to the fishery off the coast of Newfoundland, and those between this country and France in relation to the fishery on their respective shores; and local laws have been passed to give effect to these engagements.

"But in all these Treaties this distance is adopted, not as a matter of existing right established by the general law of nations, but as matter of mutual concession and convention. Instead of upholding the doctrine contended for, the fact of these Treaties having been entered into has rather the opposite tendency; for it is obvious that, if the territorial right of a nation bordering on the sea to this portion of the adjacent waters had been established by the common assent of nations, these Treaty arrangements would have been wholly superfluous. Each nation would have been bound, independently of Treaty engagement, to respect the neutrality of the other in these waters, as much as in its inland waters. The foreigner invading the rights of the local fishermen would have been amenable, consistently with international law, to local legislation prohibiting such infringement, without any stipulation to that effect by Treaty. For what object, then, have Treaties been resorted to? Manifestly, in order to obviate all questions as to concurrent or conflicting rights arising under the law of nations. Possibly, after these precedents and all that has been written on this subject, it may not be too much to say that, independently of Treaty, the 3-mile belt of sea might at this day be taken as belonging, for these purposes, to the local State.

"So much for Treaties. Then how stands the matter as to usage, to which reference is so frequently made by the publicists, in support of their doctrine? When the matter is looked into, the only usage found to exist is such as is connected with navigation, or with revenue, local fisheries, or neutrality; and it is to these alone that the usage relied on is confined.

"It may well be, I say again, that, after all that has been said and done in this respect, after the instances which have been mentioned of the adoption of the 3-mile distance, and the repeated assertion of this doctrine by the

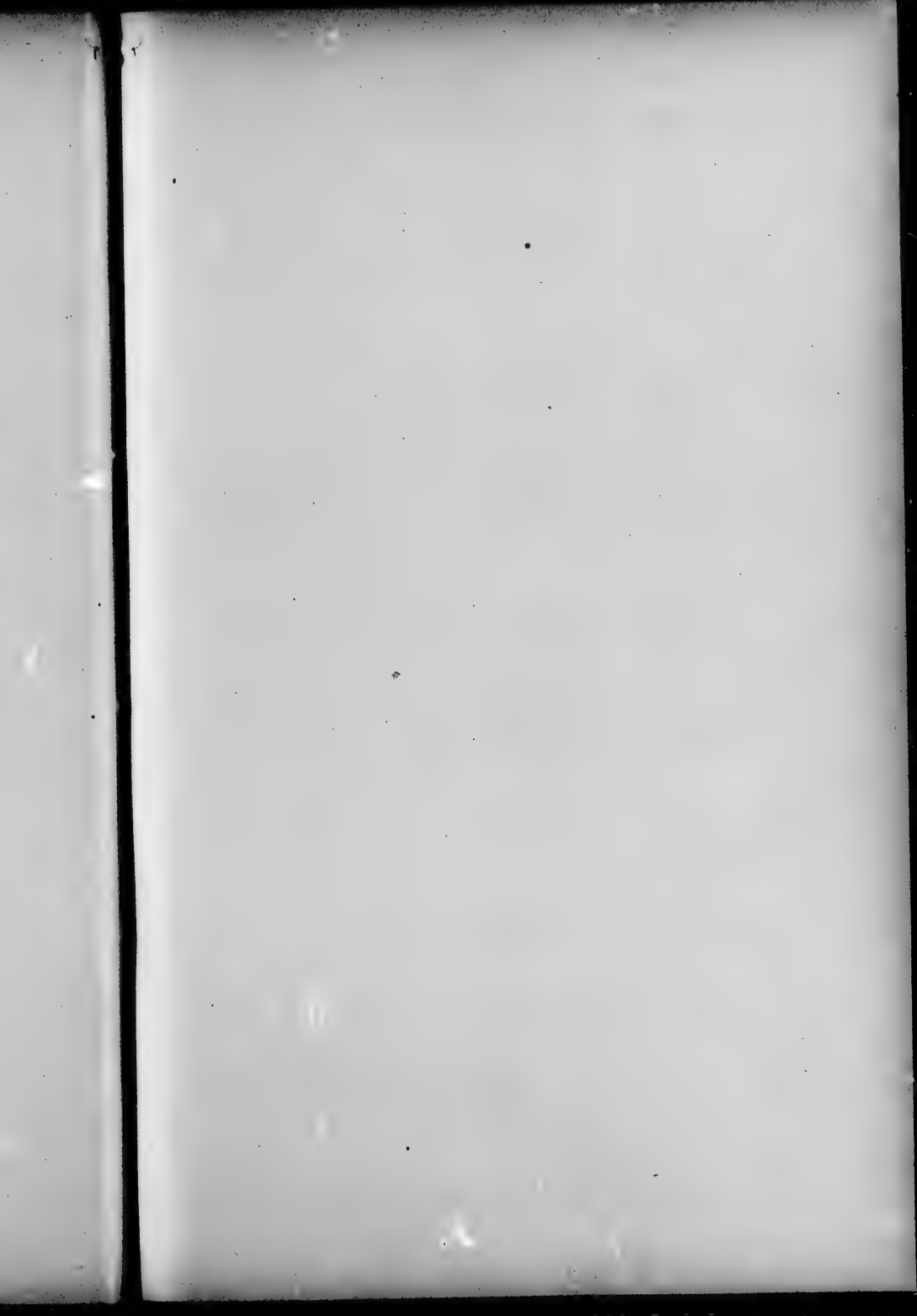
writers on public law, a nation which should now deal with this portion of the sea as its own, so as to make foreigners within it subject to its law, for the prevention and punishment of offences, would not be considered as infringing the rights of other nations. But I apprehend that, as the ability so to deal with these waters would result, not from any original or inherent right, but from the acquiescence of other States, some outward manifestation of the national will, in the shape of open practice or municipal legislation, so as to amount, at least constructively, to an occupation of that which was before unappropriated, would be necessary to render the foreigner, not previously amenable to our general law, subject to its control.

"And this brings me to the second branch of the argument, namely, that the jurisdiction having been asserted as to the narrow seas at the time the Statute passed, it must be taken to have been transferred by the Statute. The answer to such a contention is, that no reference being made in the Statute to this now-exploded claim of sovereignty, we must read the Statute as having transferred—as, indeed, it could alone transfer—such jurisdiction only as actually existed. Jurists are now agreed that the claim to exclusive dominion over the narrow seas, and consequent jurisdiction over foreigners for offences committed thereon, was extravagant and unfounded, and the doctrine of the 3-mile jurisdiction has taken the place of all such pretensions. In truth, though largely asserted in theory, the jurisdiction was never practically exercised in respect of foreigners.

"Hitherto, legislation, so far as relates to foreigners in foreign ships in this part of the sea, has been confined to the maintenance of neutral rights and obligations, the prevention of breaches of the revenue and fishery laws, and, under particular circumstances, to cases of collision. In the two first, the legislation is altogether irrespective of the 3-mile distance, being founded on a totally different principle, namely, the right of a State to take all necessary measures for the protection of its territory and rights, and the prevention of any breach of its revenue laws."

Citing these decisions, the Agent for the United States, in 1877, at Halifax, remarked in his brief:—

"Such are the general principles of English law to-day as laid down by the Chief Justice of England. The jurisdiction of a State or country over its adjoining waters is limited to 3 miles from low-water mark along its sea-coast, and the same rule applies equally to bays and gulfs whose width exceeds 6 miles from headland to headland. Property in and dominion over the sea can only exist as to those portions capable of permanent possession; that is, of a possession from the land, which possession can only be maintained by artillery. At 1 mile beyond the reach of coast-guns, there is no more possession than in mid-ocean. This is the rule laid down by almost



all the writers on international law, a few extracts from whom—

The Agent proceeded to quote:—

"At present," says Vattel, "Law of Nations," Book 1, ch. xxiii, §§ 289, 291, "the whole space of the sea within cannon-shot of the coast is considered as making a part of the territory; and, for that reason, a vessel taken under the guns of a neutral fortress is not a good prize."

"All we have said of the parts of the sea near the coast may be said more particularly and with much greater reason of the roads, bays, and straits, as still more capable of being occupied, and of greater importance to the safety of the country. But I speak of the bays and straits of small extent, and not of those great parts of the sea to which these names are sometimes given—as Hudson's Bay and the Straits of Magellan—over which the Empire cannot extend, and still less a right of property. A bay whose entrance may be defended may be possessed and rendered subject to the laws of the Sovereign; and it is of importance that it should be so, since the country may be much more easily insulted in such a place than on the coast, open to the winds and the impetuosity of the waves."

Professor Bluntschli, in his "Law of Nations," Book 4, §§ 302, 309, states the rule in the same way:—

"When the frontier of a State is formed by the open sea, the part of the sea over which the State can from the shore make its power respected—i.e., a portion of the sea extending as far as a cannon-shot from the coast—is considered as belonging to the territory of that State. Treaties or agreements can establish other and more precise limits."

Note.—The extent practised of this sovereignty has remarkably increased since the invention of far shooting cannon. This is the consequence of the improvements made in the means of defence, of which the State makes use. The sovereignty of States over the sea extended originally only to a stone's-throw from the coast; later to an arrow-shot; fire-arms were invented, and by rapid progress we have arrived to the far-shooting cannon of the present age. But still we preserve the principle: "*Terra dominium finitur ubi finitur armorum vis.*"

"Within certain limits, there are submitted to the sovereignty of the bordering State:—

"(a.) The portion of the sea placed within a cannon-shot of the shore.

"(b.) Harbours.

"(c.) Gulfs.

"(d.) Roadstead."

Note.—Certain portions of the sea are so nearly joined to the *terra firma*, that, in some measure at least, they

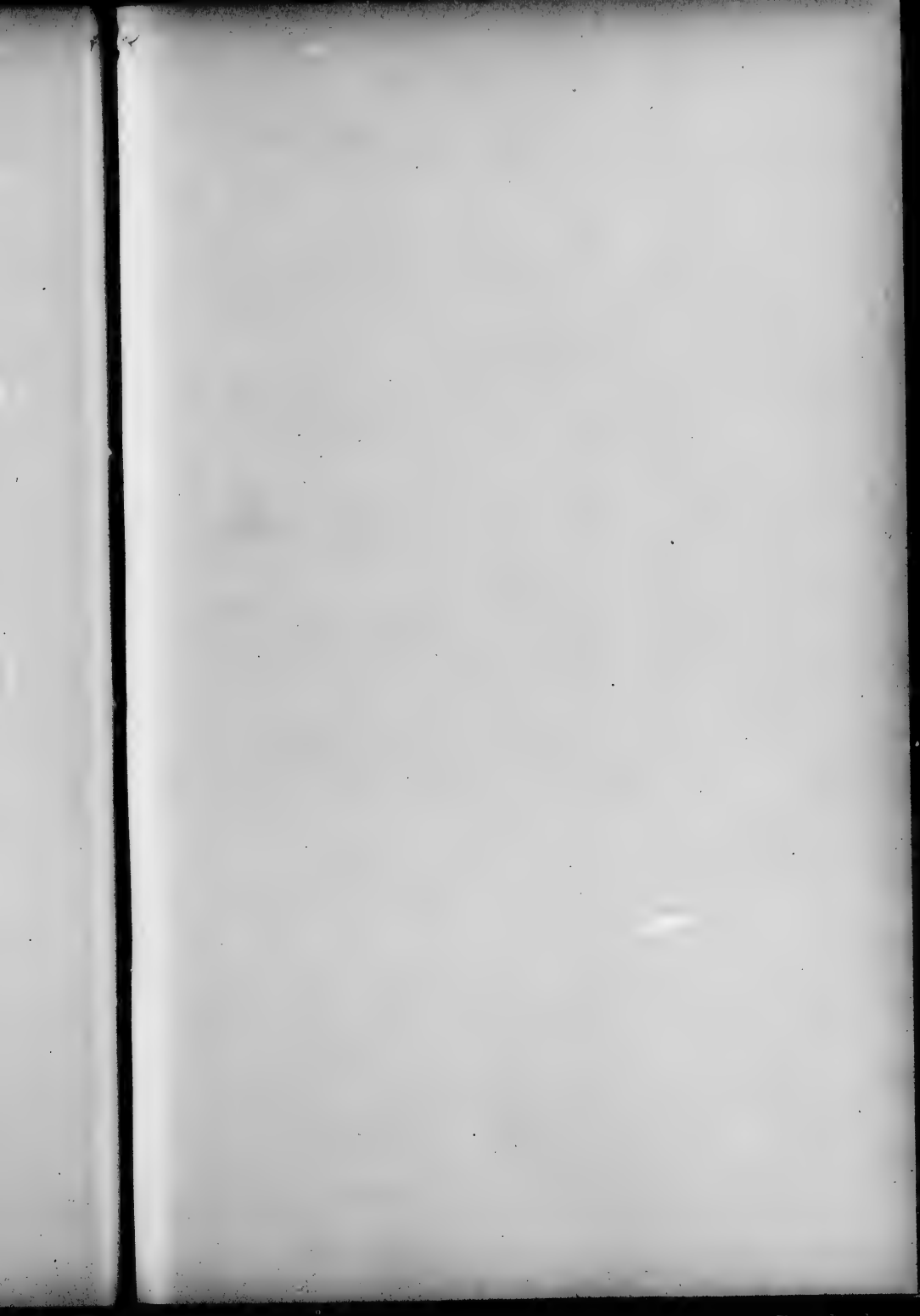
ought to form a part of the territory of the bordering State; they are considered as accessories to the *terra firma*. The safety of the State and the public quiet are so dependent on them that they cannot be contented, in certain gulfs, with the portion of the sea lying under the fire of cannon from the coast. These exceptions from the general rule of the liberty of the sea can only be made for weighty reasons, and when the extent of the arm of the sea is not large; thus, Hudson's Bay and the Gulf of Mexico evidently are a part of the open sea. No one disputes the power of England over the arm of the sea lying between the Isle of Wight and the English coast, which could not be admitted for the sea lying between England and Ireland; the English Admiralty has, however, sometimes maintained the theory of "narrow seas;" and has tried, but without success, to keep for its own interest, under the name of "King's Chambers," some considerable extents of the sea.

Kläber, "*Droit des Gens Modernes de l'Europe* (Paris, édition 1831)," vol. 1, p. 216:—

"Au territoire maritime d'un État appartiennent les districts maritimes, ou parages susceptibles d'une possession exclusive, sur lesquels l'État a acquis par occupation ou convention) et continué la souveraineté. Sont de ce nombre: (1) les parties de l'océan qui avoisinent le territoire continental de l'État, du moins, d'après l'opinion presque généralement adoptée, autant qu'elles se trouvent sous la portée du canon qui serait placé sur le rivage; (2) les parties de l'océan qui s'étendent dans le territoire continental de l'État, si elles peuvent être gouvernées par le canon des deux bords, ou que l'entrée seulement en peut être défendue aux vaisseaux (golfs, baies, et cales); (3) les détroits qui séparent deux continents, et qui également sont sous la portée du canon placé sur le rivage, ou dont l'entrée et la sortie peuvent être défendues (détroit, canal, bosphore, sonde). Sont encore du même nombre; (4) les golfs, détroits, et mers avoisinant le territoire continental d'un État, lesquels, quoiqu'ils ne sont pas entièrement sous la portée du canon, sont néanmoins reconnus par d'autres Puissances comme mer fermée; c'est-à-dire, comme soumis à une domination, et, par conséquent, inaccessibles aux vaisseaux étrangers qui n'ont point obtenu la permission d'y naviguer."

Ortolan, in his "*Diplomatie de la Mer*," pp. 145, 153 (édition 1864), after laying down the rule that a nation had control over the navigation in a straight or road whose width did not exceed 6 miles, continues:—

"On doit ranger sur la même ligne que rades, et les portes, les golfs, et les baies, et tous les enfoncements connus sous d'autres dénominations, lorsque ces enfoncements, formés par les terres d'un même État, ne dépassent pas en largeur la double portée du canon, ou lorsque



l'entrée peut en être gouvernée par l'artillerie, ou qu'elle est défendue naturellement par des îles, par des bancs, ou par des roches. Dans tous ces cas, en effet, il est vrai de dire que ces golfes ou ces baies sont en la puissance de l'État maître du territoire qui les enserme. Cet État en a la possession : tous les raisonnements que nous avons fait à l'égard des rades et des ports peuvent se répéter ici. Les bords et rivages de la mer qui baigne les côtes d'un État sont les limites maritimes *naturelles* de cet État. Mais pour la protection, pour la défense plus efficace de ces limites naturelles, la coutume générale des nations, d'accord avec beaucoup de Traités publics, permettre [sic] tracer sur mer, à une distance convenable des côtes, et suivant leurs contours, une ligne imaginaire qui doit être considérée comme la frontière maritime artificielle. Tout bâtiment qui se trouve à terre de cette ligne est dit être *dans les eaux* de l'État dont elle limite le droit de souveraineté et de juridiction."

Hautefeuille, "Droits et Devoirs des Nations Neutres," tom. 1, tit. 1, ch. 3, § 1:—

"La mer est libre d'une manière absolue, sauf les eaux baignant les côtes, qui font partie du domaine de la nation riveraine. Les causes de cette exception sont (1) que ces portions de l'océan sont susceptibles d'une possession continue; (2) que le peuple qui les possède peut en exclure les autres; (3) qu'il a intérêt, soit pour sa sécurité, soit pour conserver les avantages qu'il tire de la mer territoriale, à prononcer cette exclusion. Ces causes connues, il est facile de poser les limites. Le domaine maritime s'arrête à l'endroit où cesse la possession continue, où le peuple propriétaire ne peut plus exercer sa puissance, à l'endroit où il ne peut plus exclure les étrangers, enfin à l'endroit où, leur présence n'étant plus dangereuse pour sa sûreté, il n'a plus intérêt de les exclure.

"Or, le point où cessent les trois causes qui rendent la mer susceptible de possession privée est le même; c'est la limite de la puissance, qui est représentée par les machines de guerre. Tout l'espace parcouru par les projectiles lancés du rivage, protégé et défendu par la puissance de ces machines, est territorial, et soumis au domaine du maître de la côte. La plus grande portée du canon monté à terre est donc réellement la limite de la mer territoriale.

"En effet, cet espace seul est réellement soumis à la puissance du Souverain territorial, là, mais là seulement, il peut faire respecter et exécuter ses lois; il a la puissance de punir les infractions, d'exclure ceux qu'il ne peut pas admettre. Dans cette limite, la présence de vaisseaux étrangers veut menacer sa sûreté; au delà, elle est indifférente pour lui, elle ne peut lui causer aucune inquiétude, car, au delà de la portée du canon, ils ne peuvent lui nuire. La limite de la mer territoriale est réellement d'après le droit primitif, la portée d'un canon placé à terre.

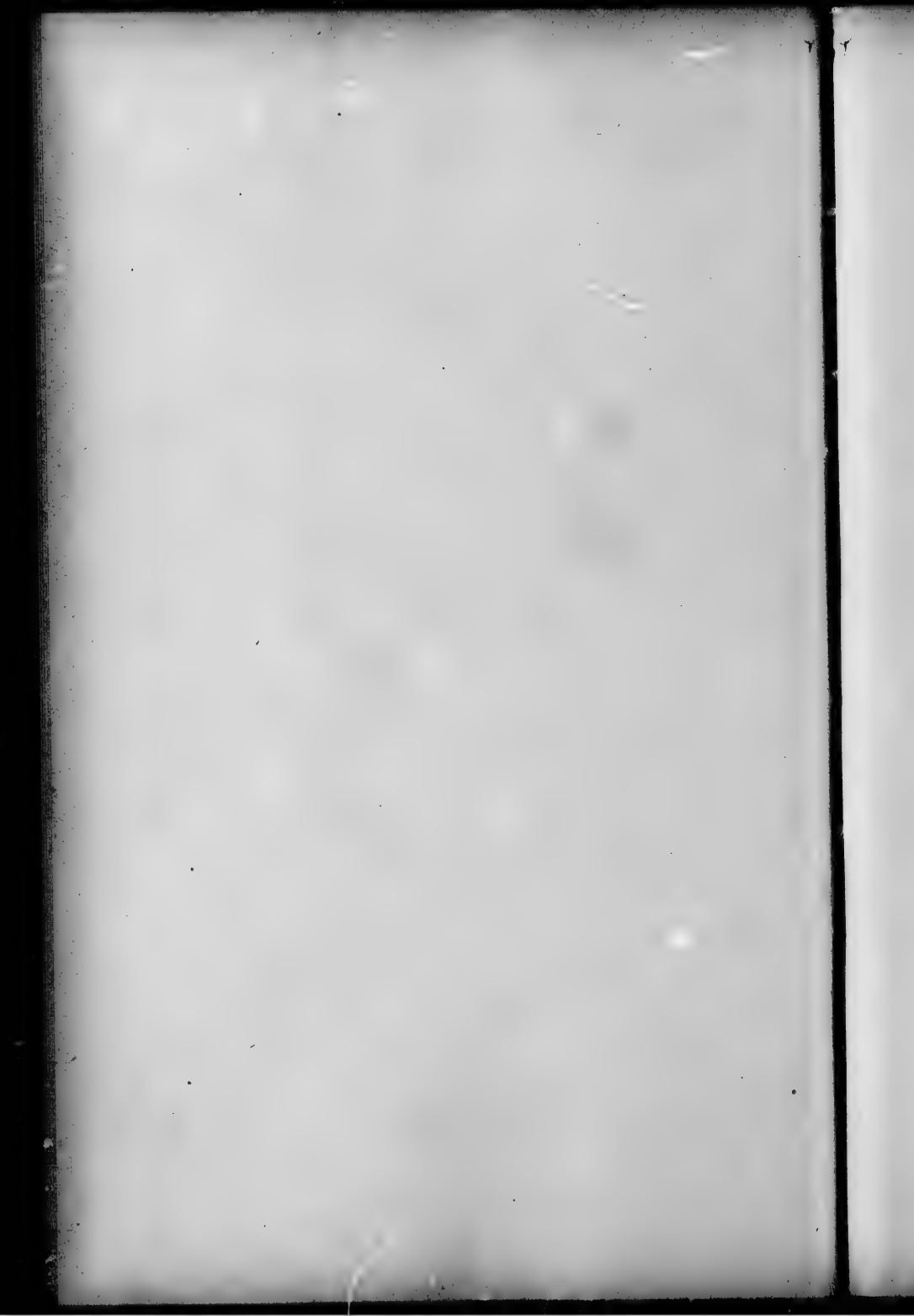
"Le droit secondaire a sanctionné cette disposition; la

plupart des Traités qui ont parlé de cette portion de la mer ont adopté la même règle. Grotius, Hubner, Bynkershoek, Vattel, Galiani, Azuni, Klüber, et presque tous les publicistes modernes les plus justement estimés, ont pris la portée du canon comme la seule limite de la mer territoriale qui fut rationnelle et conforme aux prescriptions du droit primitif. Cette limite naturelle a été reconnue par un grand nombre de peuples, dans les lois et réglemens intérieurs.

"Les côtes de la mer ne présentent pas une ligne droite et régulière; elles sont, au contraire, presque toujours coupées de baies, de caps, &c.; si le domaine maritime devait toujours être mesuré de chacun des points du rivage, il en résulterait de graves inconvénients. Aussi, est-on convenu, dans l'usage, de tirer une ligne fictive d'un promontoire à l'autre, et de prendre cette ligne pour point de départ de la portée du canon. Ce mode, adopté par presque tous les peuples, ne s'applique qu'aux petites baies, et non aux golfes d'une grande étendue, comme le Golfe de Gascogne, comme celui de Lyon, qui sont en réalité de grandes parties de la mer complètement ouvertes, et dont il est impossible de nier l'assimilation complète avec la haute mer."

The latest English writer, Mr. Amos, in his edition of Manning's "*Law of Nations*," which is praised and quoted with approval by Lord Cockburn in *Queen v. Keyn*, extends the jurisdiction of a State to the waters of bays whose width is more than 6 miles and less than 10:—

"An obvious right enjoyed by every State equally is the claim to have an equal share in the enjoyment of such things as are in their nature common to all, whether from not being susceptible of appropriation, or from not having been as yet, in fact, appropriated. Such a thing, pre-eminently, is the open sea, whether treated for purposes of navigation or fishing. . . . Nevertheless, for some limited purposes, a special right of jurisdiction, and even (for a few definite purposes) of dominion, is conceded to a State in respect of the part of the ocean immediately adjoining its own coast-line. The purposes for which this jurisdiction and dominion have been recognized are (1) the regulation of fisheries; (2) the prevention of frauds on Customs laws; (3) the exaction of harbour and light-house dues; and (4) the protection of the territory from violation in time of war between other States. The distance from the coast-line to which this qualified privilege extends has been variously measured; the most prevalent distances being that of a cannon-shot, or of a marine league from the shore. . . . In the case of bays, harbours, and creeks, it is a well-recognized custom, provided the opening be not more than 10 miles in width as measured from headland to headland, to take the line joining the headlands, and to measure from that the length of the distance of a cannon-shot or of a marine league. The limiting provision here introduced was rendered





necessary by the great width of some of the American bays, such as the Bay of Fundy and Hudson's Bay, in respect of which questions relating especially to rights of fishing had arisen. At one time, indeed, the distance of 6 miles, in place of that of 10 miles, was contended for. It is held that, in the case of straits or narrow seas less than 6 miles in breadth, the general jurisdiction and control is equally shared by all the States the territories of which form the coast-lines; and that all the States are held bound, in times of peace at any rate, to allow a free passage at all times to the ships of war of all other States."

Marten's "Précis du Droit des Gens Modernes de l'Europe" (Pinheiro-Ferreira, éd. Paris, 1864), §§ 40, 41:—

"Ce qui vient d'être dit des rivières et des lacs est également applicable aux détroits de mer et aux golfes, surtout, en tant que ceux-ci ne passent la largeur ordinaire de rivières, ou la double portée du canon.

"De même une nation peut s'attribuer un droit exclusif sur ces parties voisines de la mer (*mare proximum*) susceptibles d'être maintenues du rivage. On a énoncé diverses opinions sur la distance à laquelle s'étendent les droits du maître du rivage. Aujourd'hui toutes les nations de l'Europe conviennent que, dans la règle, les détroits, les golfes, la mer voisine, appartiennent au maître du rivage, pour le moins jusqu'à la portée du canon qui pourrait être placé sur le rivage.

"On verra ci-après que la pleine mer ne peut devenir l'objet d'une propriété plus ou moins exclusive, d'une part, parce que son usage est inépuisable et innocent en lui-même, d'autre part parce que, n'étant pas de nature à être occupée, personne ne peut s'opposer à son usage; mais de ce que la mer n'est pas susceptible de l'appropriation de l'homme, par suite de l'impossibilité pour lui de la retenir sous son obéissance, et d'en exclure les autres hommes; et aussi, à raison de son immensité et de sa qualité d'être inépuisable, il résulte que pour les parties de l'océan qui ne réunissent pas ces conditions, pour celles qui par leur nature peuvent subir la domination de l'homme et l'exclusion des autres, pour celles, enfin, dont l'usage commun ne saurait être maintenu sans nuire à la nation intéressée, et qui sont susceptibles de propriété, le principe de la liberté s'efface et disparaît. Cela a lieu notamment pour les mers territoriales et pour les mers formées. Par l'expression de 'mers territoriales,' il faut entendre celles qui baignent les côtes d'une nation et la servent pour ainsi dire de frontière. Ces mers sont soumises à la nation maîtresse de la côte qu'elles baignent, et peuvent être réduites sous la puissance de la nation propriétaire, qui a dès lors le droit d'en exclure les autres. La possession est soutenue, entière, de même que s'il s'agissait d'un fleuve, d'un lac, ou d'une partie de territoire continental. Aussi tous les Traités reconnaissent aux nations dans un intérêt de navigation, de pêche, et aussi de défense, le droit d'im-

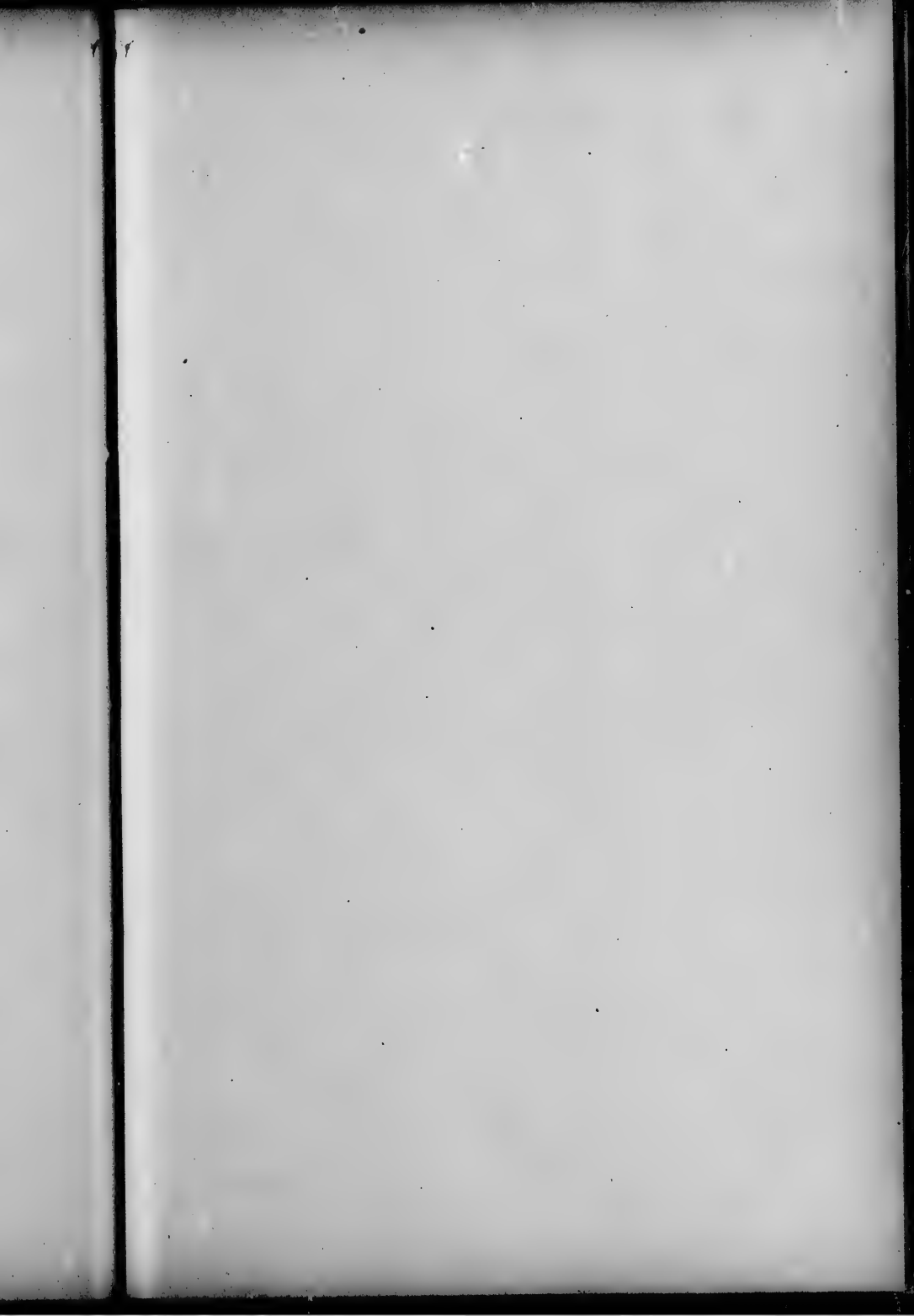
poser leurs lois dans les mers territoriales qui les bordent de même que tous les publicistes s'accordent pour attribuer la propriété de la mer territoriale à la nation riveraine. Mais on s'est longtemps demandé quelle était l'étendue de cette partie privilégiée de la mer. Les anciens auteurs portaient très loin les limites du territoire maritime, les uns à 60 milles (c'était l'opinion générale au quatorzième siècle), les autres à 100 milles. Loccenius, 'de Jur. Marit.', lib. v, cap. iv, § 6, parle de deux journées de chemin; Valin, dans son 'Commentaire sur l'Ordonnance de 1681,' propose la sonde, la portée du canon, ou une distance de 2 lieues.

"D'autres auteurs ont pensé que l'étendue de la mer territoriale ne pouvait être réglée d'une manière uniforme, mais devait être proportionnée à l'importance de la nation riveraine. Au milieu de ces opinions contradictoires, il faut, suivant Hautefeuille, 'Droits et Devoirs des Nations Neutres,' 2^{de} édition, tome i, p. 83 et suivantes, pour fixer ces principes, remonter aux causes qui ont fait excepter de la règle de la liberté des mers, les eaux baignant les côtes, et qui les ont fait ranger dans le domaine de la nation riveraine. Ces causes étant que ces portions de la mer sont susceptibles d'une possession continue; que le peuple qui les possède peut en exclure les autres; enfin, qu'il a intérêt à prononcer cette exclusion, soit pour sa sécurité, soit à raison des avantages que lui procure la mer territoriale, le domaine maritime doit cesser là où cesse la possession continue, là où cessent d'atteindre les machines de guerre. En d'autres termes, la plus grande portée du canon placé à terre est la limite de la mer territoriale, *terra potestas finitur, ubi finitur armorum vis*; et nous devons ajouter que la plupart des Traités ont adopté cette règle. beaucoup de peuples l'ont reconnue dans leurs lois et leurs règlements intérieurs; presque tous les publicistes l'ont regardé comme rationnelle, notamment, Grotius, Hubner, Bynkershoek, Vattel, Galiani, Azuni, Klüber.

"Au reste, le domaine maritime ne se mesure pas de chacun des points du rivage. On tire habituellement une ligne fictive d'un promontoire à l'autre, et on la prend comme point de départ de la portée du canon; cela se pratique ainsi pour les petites baies, les golfes d'une grande étendue étant assimilés à la pleine mer. La conservation du domaine de la mer territoriale par la nation riveraine n'est pas subordonnée à l'établissement et à l'entretien d'ouvrages permanents, tels que batteries ou forts; la souveraineté de la mer territoriale n'est pas plus subordonnée à son mode d'exercice que la souveraineté du territoire même.

"Ajoutons un mot sur les mers fermées, ou intérieures, qui sont les golfes, rades, baies, ou parties de la mer qui ne communiquent à l'océan que par un détroit assez resserré pour être réputées faire partie du domaine maritime de l'État maître des côtes. La qualité de mer fermée est subordonnée à une double condition: il faut, d'une part, qu'il soit impossible de pénétrer dans cette mer sans traverser la mer territoriale de l'État, et sans s'exposer à son canon; d'autre part, il faut que toutes les côtes soient soumises à la nation maîtresse du détroit.





"Mais une nation ne peut-elle acquérir un droit exclusif sur des fleuves, des détroits, des golfes trop larges pour être couverts par les canons du rivage, ou sur les parties d'une mer adjacente qui passent la portée du canon, ou même la distance de 3 lieues? Nul doute d'abord qu'un tel droit exclusif ne puisse être acquis contre une nation individuelle qui consent à le reconnaître. Cependant, il semble même que ce consentement ne soit pas un requisit^e essentiel pour une telle acquisition, en tant que le maître du rivage se voit en état de maintenir à l'aide du local, ou d'une flotte, et que la sûreté de ses possessions territoriales offre une raison justificative pour l'exclusion des nations étrangères. Si de telles parties de la mer sont susceptibles de domination, c'est une question de fait de savoir lesquels de ces détroits, golfes, ou mers adjacentes, situés en Europe, sont libres de domination, lesquels sont dominés (*clause*), ou quels sont ceux sur la liberté desquels on dispute."

De Cussey. "Phases et Causes Célèbres du Droit Maritime des Nations." (Leipzig, éd. 1856), liv. i, tit. 2, §§ 40, 41 :—

"Mais la protection du territoire de l'État du côté de la mer, et la pêche, qui est la principale ressource des habitants du littoral, ont fait comprendre la nécessité de reconnaître un territoire maritime. Ou, mieux encore, une mer territoriale, dépendant de tout État Riverain de la mer; c'est-à-dire, une distance quelconque à partir de la côte, qui fut réputée la continuation du territoire, et à laquelle devaient s'appliquer pour tout État Maritime la souveraineté spéciale de la mer.

"Cette souveraineté s'étend aux districts et parages maritimes, tels que les rades et baies, les golfes, les détroits, dont l'entrée et la sortie peuvent être défendues par le canon.

"Tous les golfes et détroits ne sauraient appartenir, dans la totalité de leur surface ou de leur étendue, à la mer territoriale des États dont ils baignent les côtes; la souveraineté de l'État reste bornée sur les golfes et détroits d'une grande étendue à la distance qui a été indiquée au précédent paragraphe; au delà, les golfes et détroits de cette catégorie sont assimilés à la mer, et leur usage est libre pour toutes les nations."

The foregoing authorities are taken in full from the brief of the Agent of the United States for the Commission.

The brief on behalf of the British Government, in reply to this brief, did not dispute the general principle of international law which the foregoing authorities so conclusively support, but dealt with the question of the jurisdiction over those portions of a nation's adjacent waters which are included by promontories or headlands within its territories.

It dealt particularly with the width of the mouths of the bays which might be considered within the territorial limits of a country.

The British brief also raised the point that, by the Convention of 1818, United States' fishermen were prohibited from fishing within 3 marine miles of the entrances of any such bays, creeks, or harbours of the British dominions in America.

While there is no evidence of either an assertion (in the sense of persisting in a claim), or an exercise of exclusive maritime jurisdiction by any Power in Behring Sea, it is submitted that even if Russia, by the Ukase of 1821, did claim and afterwards assert exclusive jurisdiction over a coastal limit of 100 miles in that sea, such an assertion established no right or authority according to international law.

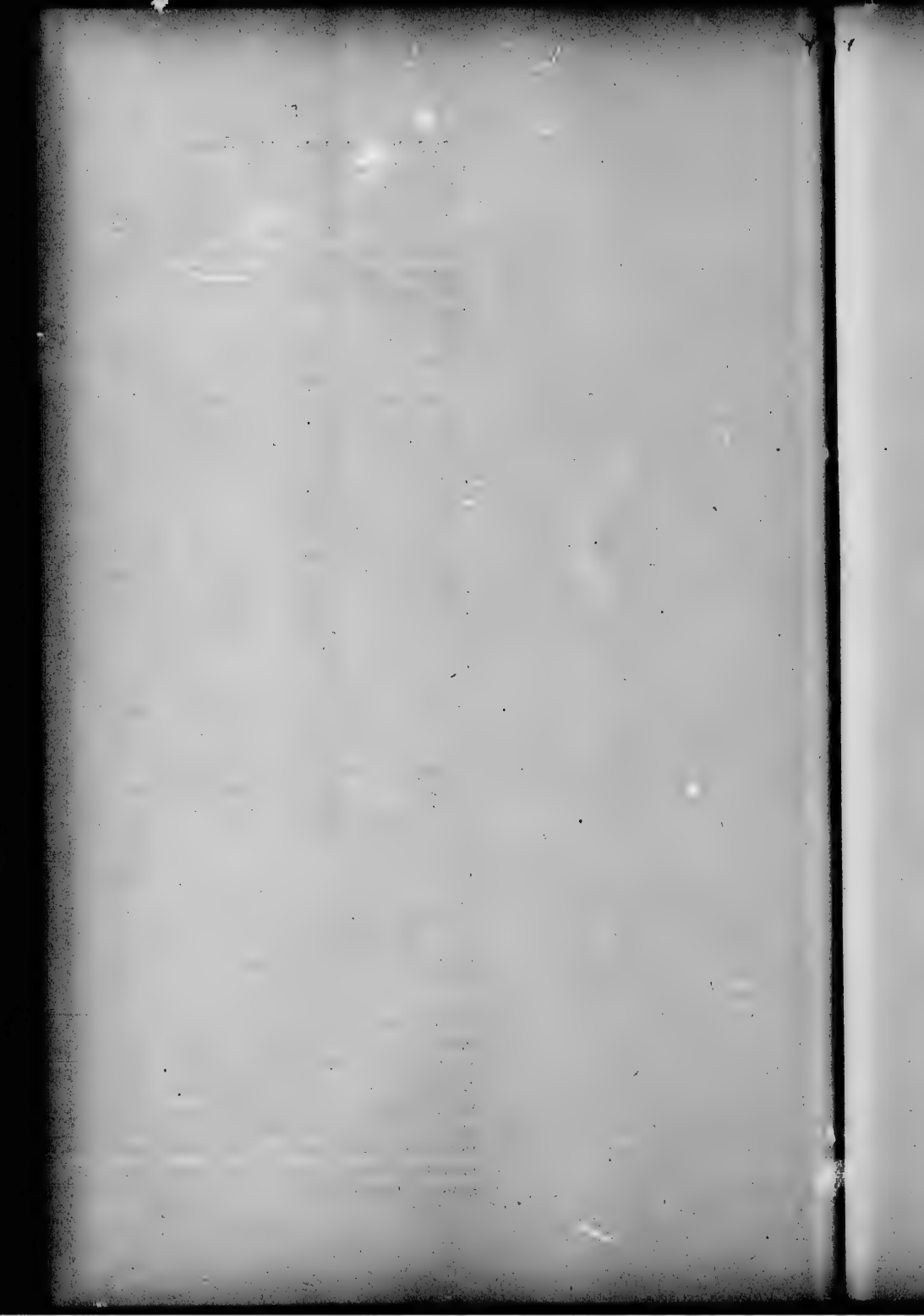
Phillimore, I, § 174:—

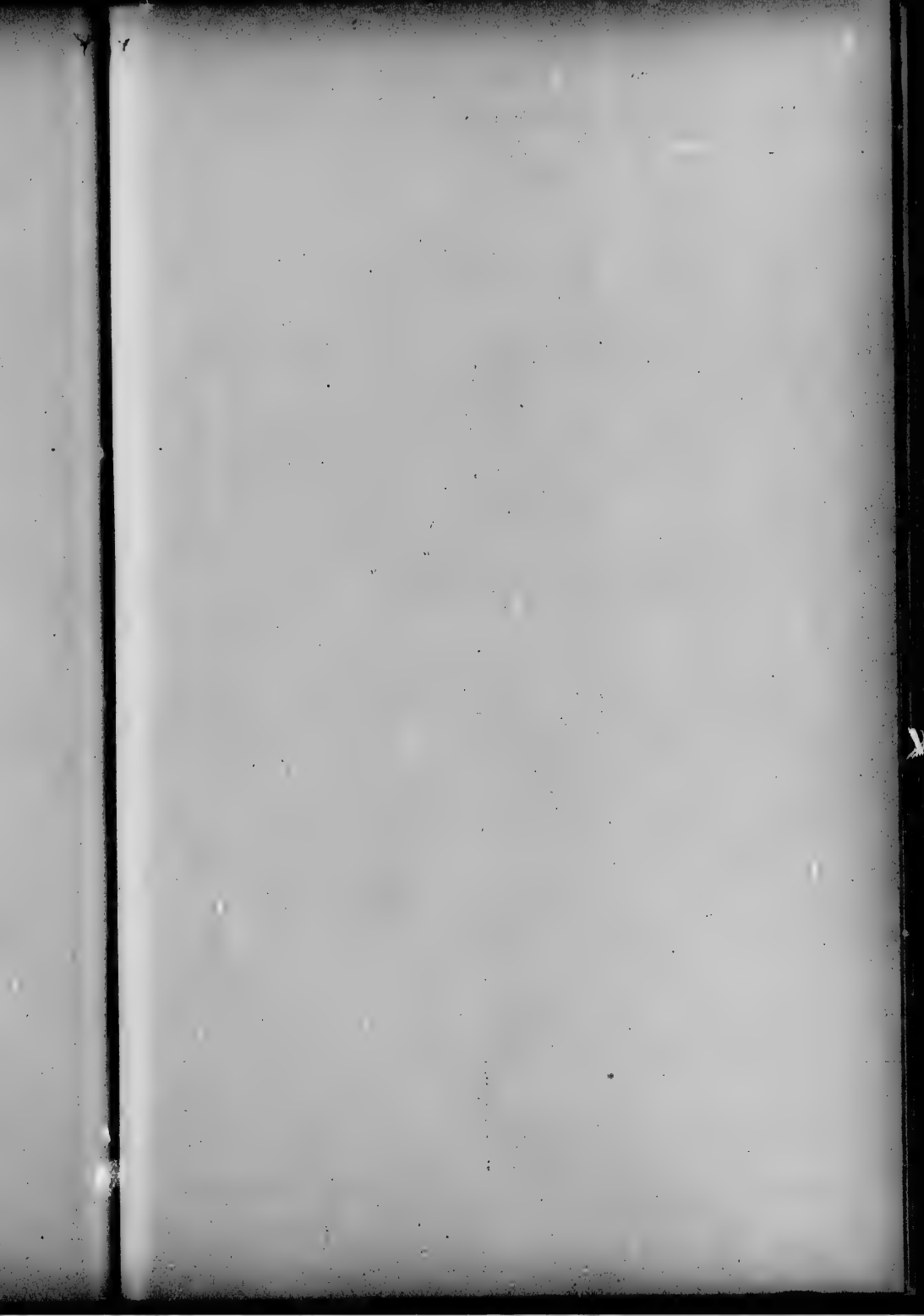
"The right of navigation, fishing, and the like upon the open sea, being *jura mera facultatis*, rights which do not require a continuous exercise to maintain their validity, but which may or may not be exercised according to the free will and pleasure of those entitled to them, can neither be lost by non-user or prescribed against, nor acquired to the exclusion of others by having been immemorially exercised by one nation only. No presumption can arise that those who have not hitherto exercised such rights have abandoned the intention of ever doing so."

Calvo recognises the temptation which the proximity to the coast of "fish, oysters, and other shell-fish" affords to nations to extend their sovereignty beyond the 3-mile limit. Yet, instead of permitting such an extension, especially when supported by long use, he distinctly says:—

"De pareilles dérogations aux principes universellement reconnus ont besoin, pour devenir obligatoires, d'être sanctionnées par des Conventions expresses et écrites."

The reason which flows from the nature of prescription, however, is sufficient to establish the point in question, without the aid of authority. Unlike adverse possession or limitation, prescription rests for its validity on a presumed prior grant. Now, in international law there is no room for such a presumption. National archives are not so susceptible of oblivion and destruction as to call it into existence.





Adverse possession and limitation have no place in marine international law.

The controversy between Grotius and Selden as to the right of appropriation by a nation of the sea beyond the immediate vicinity of the coast is thus reviewed by Wheaton:—

"There are only two decisive reasons applicable to the question. The first is physical and material, which would alone be sufficient, but when coupled with the second reason, which is purely moral, will be found conclusive of the whole controversy:—

Wheaton,
Elements, § 187.

"1. Those things which are originally the common property of all mankind can only become the exclusive property of a particular individual or society of men by means of possession. In order to establish the claim of a particular nation to a right of property in the sea, that nation must obtain and keep possession of it, which is impossible.

"2. In the second place, the sea is an element which belongs equally to all men, like the air. No nation, then, has the right to appropriate it, even though it might be physically possible to do so.

"It is thus demonstrated that the sea cannot become the exclusive property of any nation; and, consequently, the use of the sea for these purposes remains open and common to all mankind."

Cf. Ortolan,
"Diplomatie de la
Mer," tom. I,
pp. 120-126.

In a note on the foregoing passage of Wheaton, Mr. Dana adds that—

"The right of one nation to an exclusive jurisdiction over an open sea was, as stated in the text, vested solely on a kind of prescription. But, however long acquiesced in, such an appropriation is inadmissible in the nature of things, and whatever may be the evidence of the time or nature of the use it is set aside as a bad usage, which no evidence can make legal. The only question now is, whether a given sea or sound is, in fact, as a matter of politico-physical geography, within the exclusive jurisdiction of one nation. The claim of several nations, whose borders surround a large open sea, to combine and make it *mare clausum* against the rest of the world, cannot be admitted. The making of such a claim to the Baltic was the infirmity of the position taken up by the Armed Neutrality in 1780 and 1800, and in the Russian Declaration of War against England in 1807."

He then quotes the following authorities in support of his position: Ortolan, "Dip. de la Mer," I, 120-126; Kent's "Comm." (Abdy's edit.), I, 110-112; Wildman's "Int. Law," I, 71; Heffter, "Europ. Völkerr.," § 75; De Cussy, "Droit Marit.," liv. I, lit. 2, § 39; Halleck's "Int. Law," I, p. 185; Woolsey's "Int. Law," §§ 54-56; Manning's "Law of Nations," 25;

Rayneval's "De la Liberté des Mers," II, 1-108; Hautefeuille, "Droits des Nat. Neutr.," liv. I, lit. 1, ch. I, § 4; "Twee Gebroeders," Rob. III, 386; "Forty-nine Casks of Brandy," Hagg. III, 290.

Wheaton proceeds to state that—

"By the generally approved usage of nations, which forms the basis of international law, the maritime territory of every territory extends:—

"1. To the ports, harbours, bays, mouths of rivers, and adjacent parts of the sea inclosed by headlands belonging to the same State.

"2. To the distance of a marine league, or so far as a cannon-shot will reach from the shore, along all the coasts of the State.

"3. To the straits and sounds, bounded on both sides by the territory of the same State, so narrow as to be commanded by cannon-shot from both shores, and communicating from one sea to another.

See also §§ 188-190.

"The Behring Sea can be brought under the head of neither strait nor marginal belt. In that it is not entirely surrounded by land, it falls short of the requisites of an inclosed sea. For not only is the Behring Strait 36 miles wide, and the distance between many of the islands forming the southern boundary of this sea far in excess of that, but the distance between the last island of the Aleutian chain and the nearest Russian island of the Commander group is 183 miles.

"Again, regarded as a bay or gulf, the Behring Sea fails to enter the category of closed seas. For, waiving all physico-geographical objections to such a classification, there still remains to its character of closed sea the insuperable objection of impossibility of possession.

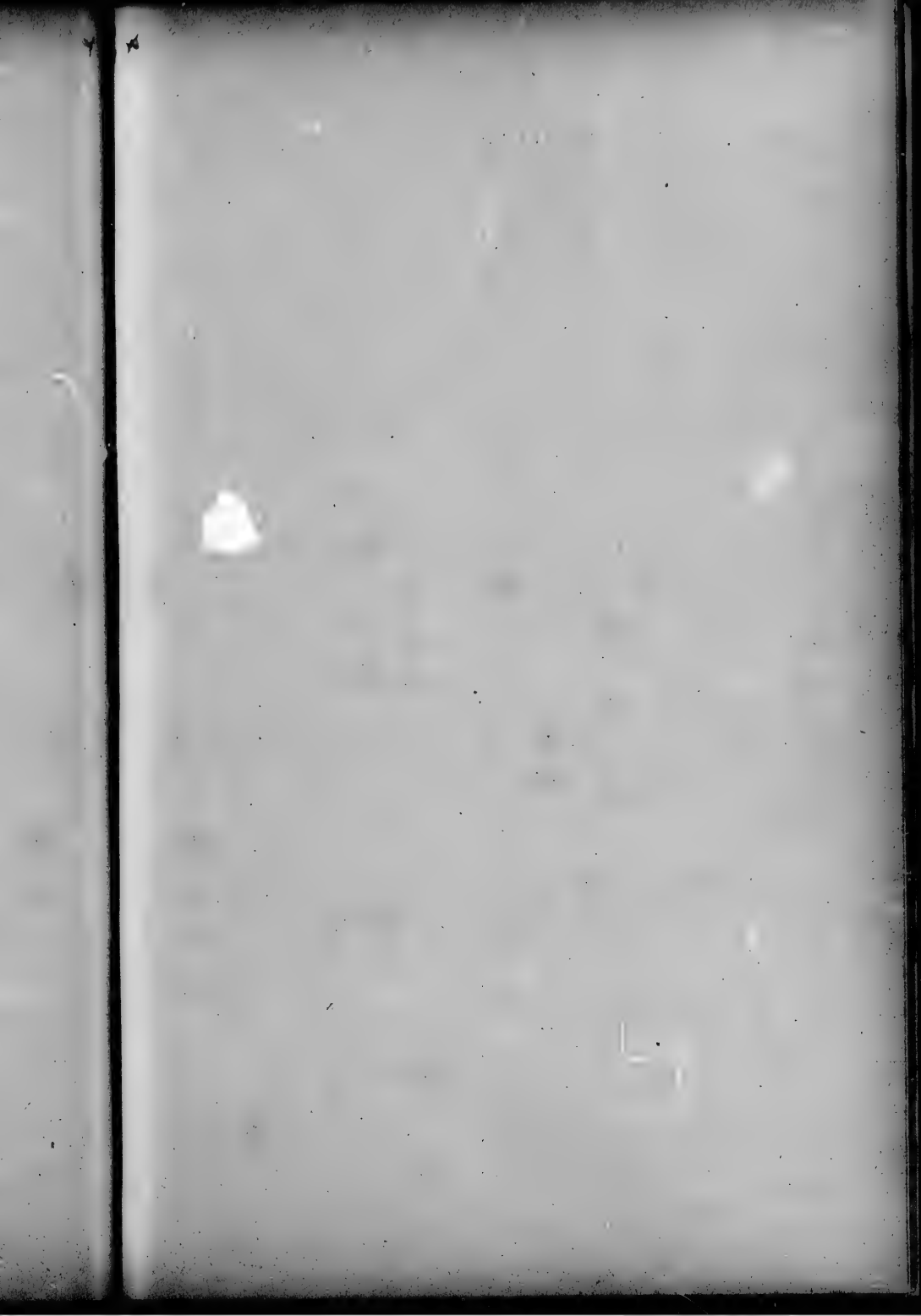
"The name bay or gulf does not necessarily carry with it the idea of possessibility, and international law, when importuned to accord such a character to the Behring Sea, cries out with Vattel:—

Droit, &c.,
t. I, l. I, §. xxiii,
§ 291.

"*'Mais je parle des baies et détroits de peu d'étendue, et non de ces grands espaces de mer auxquels on donne quelquefois ces noms, tels que la Baie de Hudson, le Détroit de Magellan, sur lesquels l'empire ne saurait s'étendre, et moins encore la propriété.'*"

Under the clauses of the Convention of the 8th February, 1858, the case of the "Washington" came before the Joint Commission for settlement of claims in London, and on the disagreement of the Commissioners was decided by Mr. Joshua Bates in favour of the United States. In his decision he said:—

"The question turns, so far as relates to the Treaty stipulations, on the meaning given to the word 'bays' in the Treaty of 1783. By that Treaty, the Americans had no right to dry and cure fish on the shores and bays of



Newfoundland; but they had that right on the shores, coasts, bays, harbours, and creeks of Nova Scotia; and, as they must land to cure fish on the shores, bays, and creeks, they were evidently admitted to the shores of the bays, &c. By the Treaty of 1818, the same right is granted to cure fish on the coasts, bays, &c., of Newfoundland; but the Americans relinquished that right, and the right to fish within 3 miles of the coasts, bays, &c., of Nova Scotia. Taking it for granted that the framers of the Treaty intended that the word 'bay' or 'bays' should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the 'Washington,' in fishing 10 miles from the shore, violated no stipulations of the Treaty.

"It was urged on behalf of the British Government that by 'coasts,' 'bays,' &c., is understood an imaginary line drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends 3 marine miles outside of this line, thus closing all the bays on the coast or shore, and that great body of water, called the Bay of Fundy, against Americans and others, making the latter a British bay. This doctrine of the headlands is new, and has received a proper limit in the Convention between France and Great Britain of the 2nd August, 1839,* in which 'it is agreed that the distance of 3 miles, fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries, shall, with respect to bays the mouths of which do not exceed 10 miles in width, be measured from a straight line drawn from headland to headland.'

"The Bay of Fundy is from 65 to 75 miles wide and 120 to 140 miles long; it has several bays on its coast; thus the word 'bay,' as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The islands of Grand Manan (British) and Little Manan (American) are situated nearly on a line from headland to headland. These islands, as represented in all geographies, are situated in the Atlantic Ocean. The conclusion is therefore in my mind irresistible that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word as used in the Treaties of 1783 and 1818."

The Agent for the United States before the Halifax Fisheries Commission, 1877, quotes this decision, and adds the following note:—

"The Russian claim to extraordinary jurisdiction was expressly founded on a supposed right to hold the Pacific

* This Convention between France and Great Britain extended the headland doctrine to bays 10 miles wide; thus going beyond the general rule of international law, according to which no bays are treated as within the territorial jurisdiction of a State which are more than 6 miles wide on a straight line measured from one headland to the other.

as *mare clausum*, because that nation claimed the territory on both sides :—

Ortolan, "Règles Internationales et Diplomatique de la Mer," vol. i, p. 147.

"Un droit exclusif de domaine et de souveraineté de la part d'une nation sur une telle mer n'est incontestable qu'autant que cette mer est *totalemen*t enclavée dans ce territoire de telle sorte qu'elle en fait partie intégrante, et qu'elle ne peut absolument servir de lieu de communication et de commerce qu'entre les seuls citoyens de cette nation,' or, in the words of Sir Travers Twiss, 'is entirely inclosed' by the territory of a nation, and has no other communication with the ocean than by a channel, of which that nation may take possession.' ('Rights and Duties of Nations in time of Peace,' p. 174.)"

So Halleck says :—

Halleck's International Law, vol. i, cap. 6, pp. 142-145.

"21. It is generally admitted that the territory of a State includes the seas, lakes, and rivers entirely inclosed within its limits. Thus, so long as the shores of the Black Sea were exclusively possessed by Turkey, that sea might with propriety be considered as a *mare clausum*; and there seemed no reason to question the right of the Ottoman Porte to exclude other nations from navigating the passage which connects it with the Mediterranean, both shores of this passage being also portions of the Turkish territory. But when Turkey lost a part of her possessions bordering upon this sea, and Russia had formed her commercial establishments on the shores of the Euxine, both that Empire and other Maritime Powers became entitled to participate in the commerce of the Black Sea, and, consequently, to the free navigation of the Dardanelles and the Bosphorus. This right was expressly recognised by the Treaty of Adrianople in 1829.

"22. The great inland lakes and their navigable outlets are considered as subject to the same rule as inland seas; where inclosed within the limits of a single State, they are regarded as belonging to the territory of that State; but if different nations occupy their borders, the rule of *mare clausum* cannot be applied to the navigation and use of their waters."

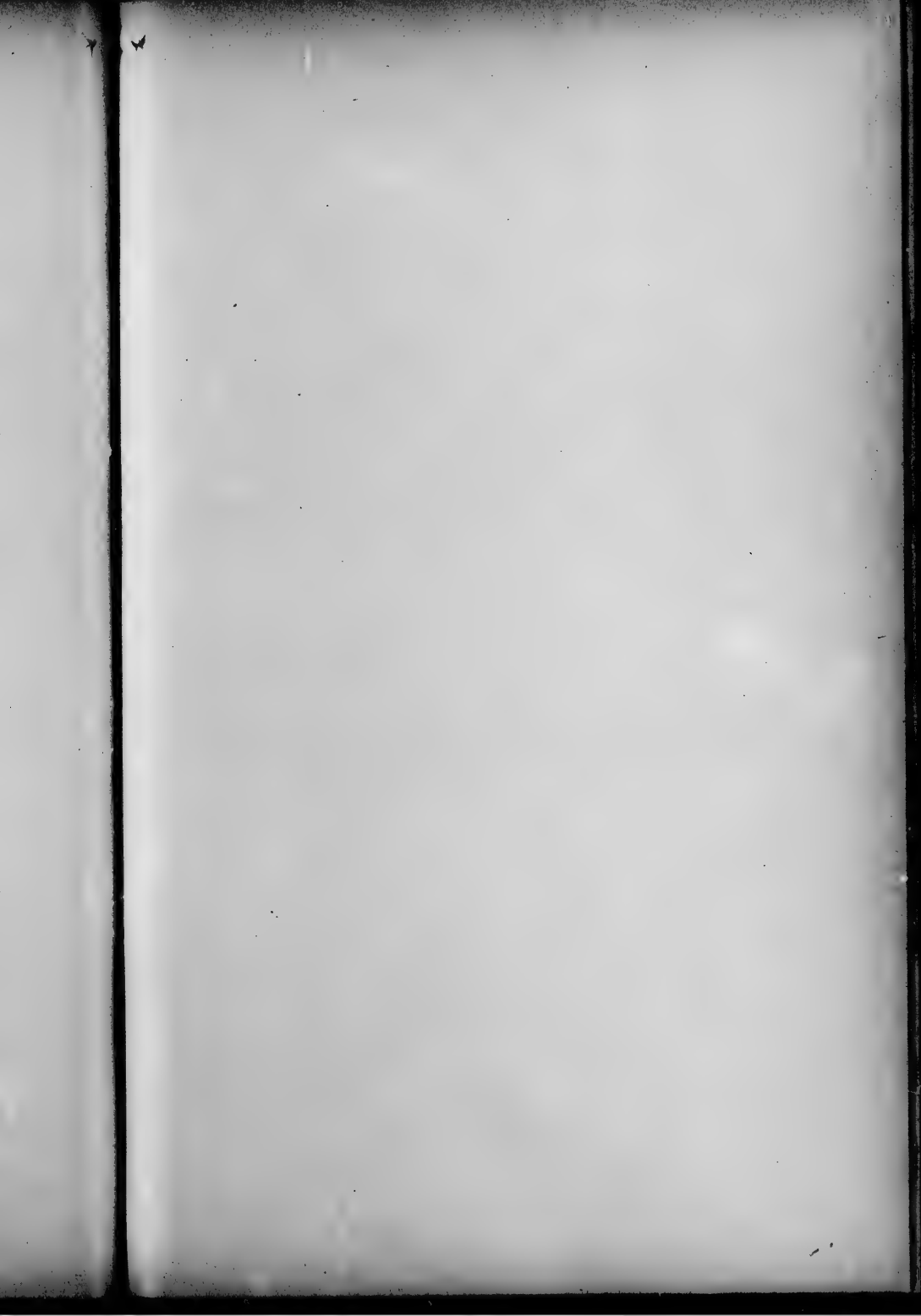
Wharton, section 32, p. 111 :—

These Treaties universally accepted until now, as an abandonment of Russia's claim. Wharton, sec. 159, where, also, President Monroe's construction of the Treaty appears.

"Russia having asserted in 1822 to 1824 an exclusive jurisdiction over the north-west coast waters of America from Behring Strait to the 51st degree of north latitude; this claim was resisted by the United States and Great Britain, and was surrendered in a Convention between Russia and the United States in April 1824 . . . , and in a Convention between Great Britain and Russia, in February 1825."—(2 Lyman's "Diplomacy of the United States," chap. 11.)

Davis, p. 44 :—

"Russia, in 1822, laid claim to exclusive jurisdiction over that part of the Pacific Ocean lying north of the



51st degree of north latitude, on the ground that it possessed the shores of that sea on both continents beyond that limit, and so had the right to restrict commerce to the coast inhabitants. England and the United States entered vigorous protests against the right claimed by Russia as contrary to the principles of international law, and it was formally withdrawn in 1824."

Woolsey, 6th edition, section 59, p. 73:—

"Russia finally, at a more recent date, based an exclusive claim to the Pacific north of the 51st degree, upon the ground that this part of the ocean was a passage to shores lying exclusively within her jurisdiction; but this claim was resisted by our Government, and withdrawn in the temporary Convention of 1824. A Treaty of the same Empire with Great Britain in 1825 contains similar concessions."

"The recent controversy between Great Britain and the United States involving the right of British subjects to catch seals in North Pacific waters appears to be an attempted revival of these old claims to jurisdiction over broad stretches of sea. That an international agreement establishing a rational close season for the fur-seal is wise and necessary no one will dispute, but to prevent foreigners from sealing on the high sea or within the Kamschatkan Sea, which is not even inclosed by American territory, its west and north-west shores being Russian, is as unwarranted as if England should warn fishermen of other nationalities off the Newfoundland banks."

"The right of all nations to the use of the high sea being the same, their right to fish upon the high seas or on banks or shoal-places in them are equal."

Hall, 3rd edition, 1890, p. 147:—

"*Note.*—A new claim subsequently sprung up in the Pacific, but it was abandoned in a very short time. The Russian Government pretended to be Sovereign over the Pacific north of the 51st degree of latitude, and published an Ukase in 1821, prohibiting foreign vessels from approaching within 100 Italian miles of the coasts and islands bordering upon or included in that portion of the ocean. This pretension was resisted by the United States and Great Britain, and was wholly given up by Conventions between the former Powers and Russia in 1824 and 1825. . . . With flagrant inconsistency the United States, since acquiring possession of Alaska, have claimed as attendant upon it, by virtue of cession from Russia, about two-thirds of the Behring Sea, a space of 1,500 miles long and 600 miles wide, and upon the ground of this claim have seized British vessels engaged in seal-fishing. In at least one case the master and mate of a vessel so taken have been fined and imprisoned; the vessel was seized for fishing at a distance of more than 70 miles from land."

It is true that, by the British "Hovering Act" of 1786, and similar legislation in the United States for certain revenue purposes, a jurisdiction of 4 leagues from the coasts is assumed. Mr. Wheaton states in his text (p. 323) that these laws have been declared by judicial authority in each country to be consistent with the law and usage of nations; but Mr. Dana, in his note, section 179, says:—

"The statement in the text requires further consideration. It has been said that the consent of nations extends the territoriality of a State to 1 marine league or cannon-shot from the coast. Acts done within this distance are within the Sovereign authority. The war-right of visit and search extends over the whole sea, but it will not be found that any consent of nations can be shown in favour of extending what may be strictly called territoriality for any purposes whatever beyond the marine league or cannon-shot. Doubtless, States have made laws for revenue purposes touching acts done beyond territorial waters, but it will not be found that in later times the right to make seizures beyond such waters has been insisted upon against the remonstrance of other States, or that a clear and unequivocal judicial precedent now stands, sustaining such seizures, when the question of jurisdiction has been presented. The revenue laws of the United States, for instance, provide that if a vessel bound to a port in the United States shall (except from necessity) unload cargo within 4 leagues from the coast, and before coming to the proper port for entry and unloading, and receiving permission to do so, the cargo is forfeited, and the master incurs a penalty (Act of 2nd March, 1797, section 27). But the Statute does not authorize the seizure of a foreign vessel when beyond her territorial jurisdiction."

A Collection of Statutes and Treaties touching the universal adoption of the Marine League.

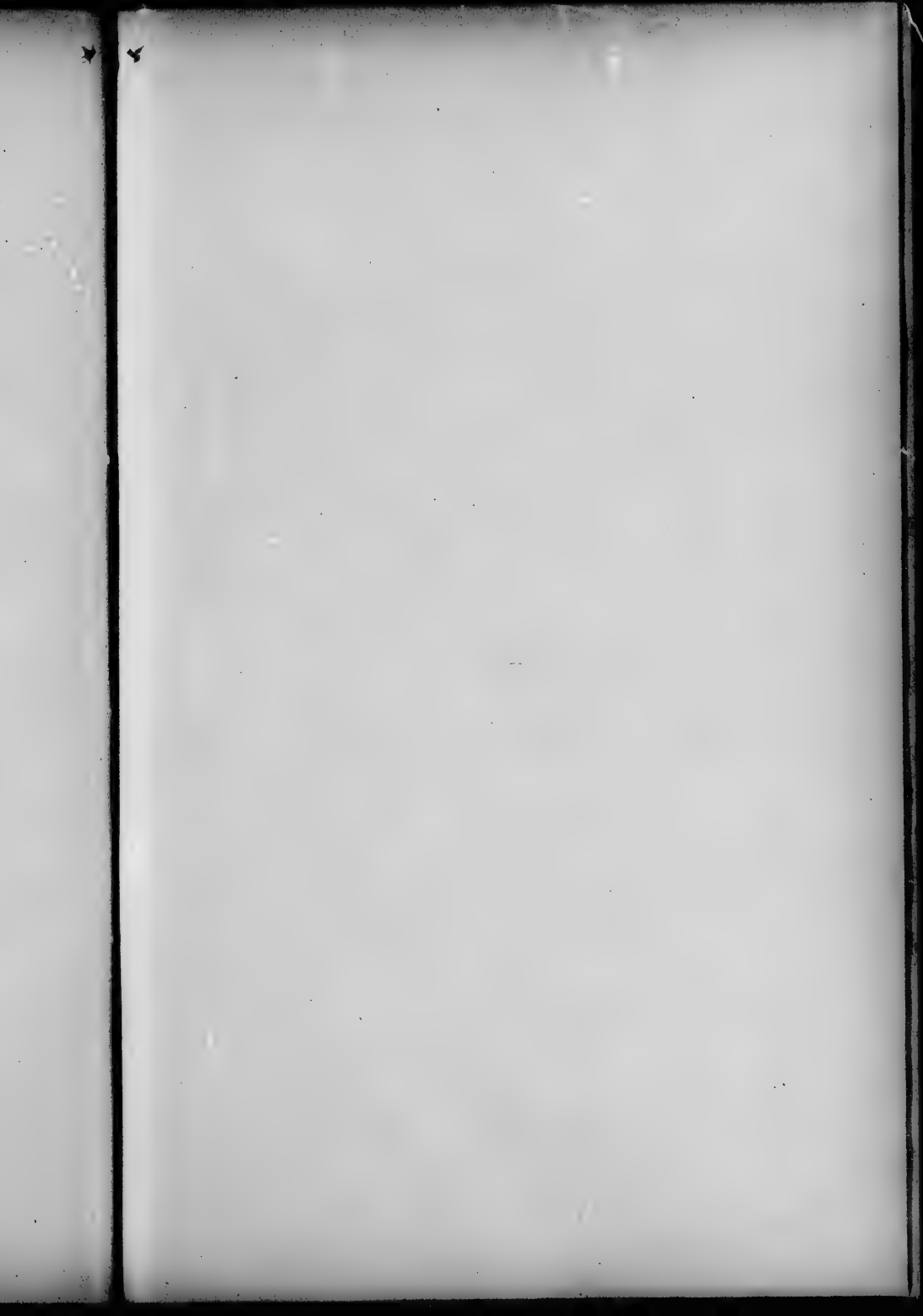
Treaties and Statutes declaratory as
to the marine limit.

In 1794, in a Treaty between Great Britain and the United States of America, there was a recognition of the limit of maritime jurisdiction. Article XXV laid it down that:—

"Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon-shot of the coast, nor in any of the bays, ports, or rivers of their territories by ships of war," &c.

The Congress of the United States in the same year (Cap. 226, approved the 5th June, 1794) enacted that:—

"The District Courts shall take cognizance of complaints, by whomsoever instituted, in cases of captures made



within the waters of the United States, or within 1 marine league of the coasts or shores thereof."

Again, in 1819, when Great Britain and the United States of America were settling their fishery rights, the United States renounced all claim to "take dry or cure fish on or within 3 marine miles of the coast, bays, or harbours of His Britannic Majesty's dominion in America."

"State Papers,"
vol. xx, 1832,
p. 250.

Article IX in the Convention between Great Britain and France (2nd August, 1839), a Treaty for the purpose of defining the limits of the exclusive right of fishery, provides:—

"The subjects of Her Britannic Majesty shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of the British Islands," &c.

Article X provides that these miles shall be geographical miles, whereof sixty make a degree of latitude.

On the 5th December, 1875, the German ship "Deutschland," on her voyage from Bremen to New York, was stranded on the Kentish Knock, 17 English nautical miles from Harwich.

German official
Report on
stranding of
"Deutschland,"
laid before the
Reichstag January
12, 1876.
Page 1.

The German Government were asked on the 8th December, 1875, by Her Majesty's Government, if they wished an official inquiry on the matter to be held in England.

On the 11th December the German Government assented to this course.

The inquiry took place before Mr. Rothery and Captains Harris and White, the German Government being represented by counsel.

The matter gave rise to an interpellation in the German Reichstag by a member named Dr. Capp, who asked for explanations on three points, the last of which was, "How comes it that disasters of this kind occurring at a distance of some 17 miles from the English coast are dealt with exclusively by the English authorities?"

Page 29.

In the debate which took place in the Reichstag, Dr. Capp called attention to the fact, that according to the law of nations maritime countries had only jurisdiction to the distance of a cannon-shot from shore, which distance was commonly interpreted as 3 English nautical miles. England, he said, had in a Statute of George II, in 1736, positively laid down this distance as 4 English miles. It did not there-

Page 35.

fore seem to be clear why England, in spite of this, had held an inquiry into a case which had occurred 17 miles from her coast, where England had nothing to say to it—on the high sea, in fact.

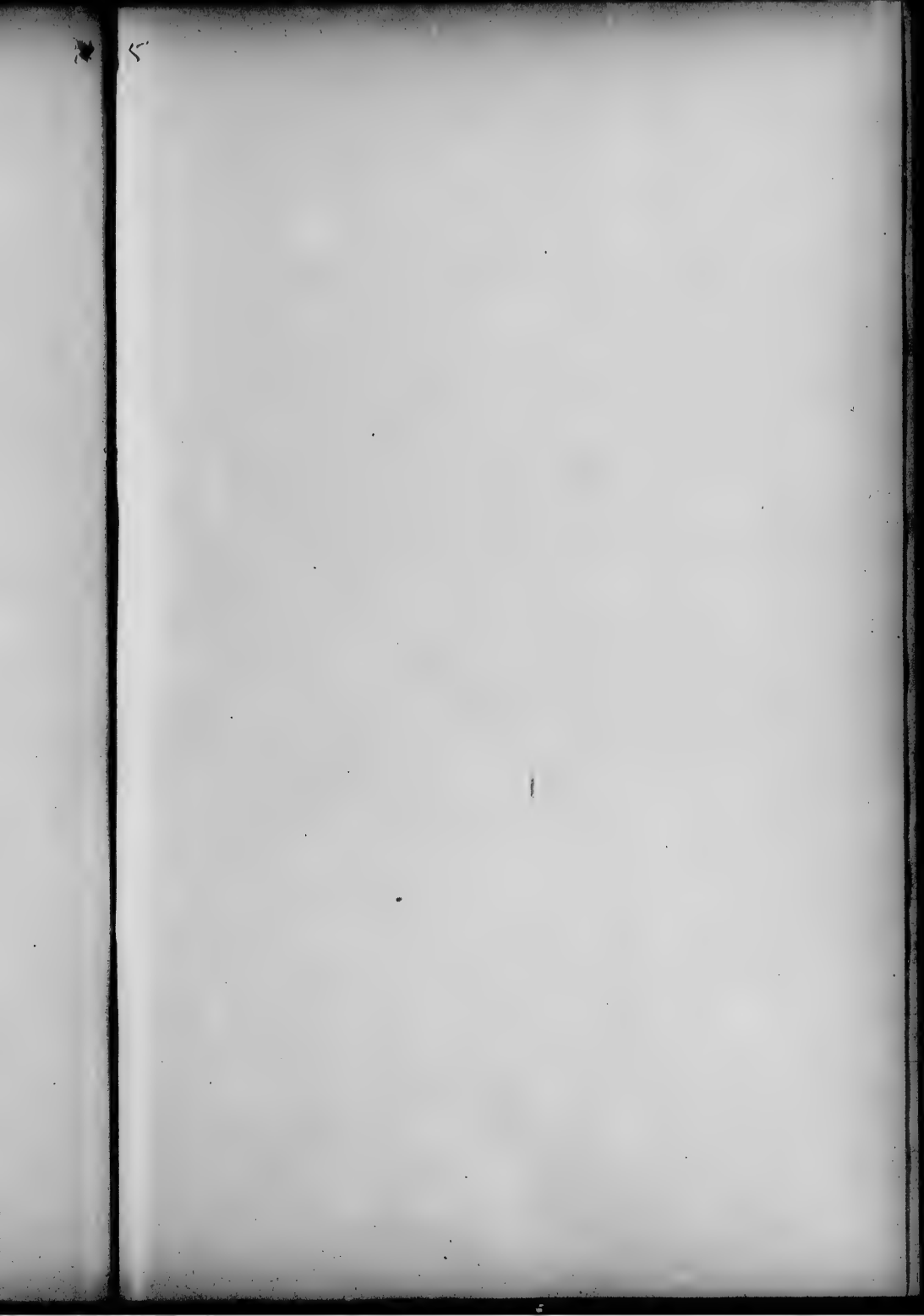
Page 37.

Herr von Philipborn, Privy Councillor and Director in the Prussian Foreign Office, explained in reply that in England, under the Merchant Shipping Act, the Receiver of Wrecks had the power to inquire into the circumstances of wrecks near the coast both of British and foreign vessels, but, in the case of the latter, only when the wreck occurred within 8 nautical miles of the English coast. He went on to say that it was desirable to come to an understanding with the English Government, whereby the Wreck Receivers should be empowered to inquire into cases of German wrecks occurring outside the 8-mile limit.

Pages 43-57.

Correspondence took place on this subject between the British and German Governments, which ended in authority being given by Germany for the British Wreck Receiver to deal with such cases as occurred outside the 8-mile zone. The only condition attached was that the authority was to be confined to cases where the ships or crews came to British harbours or coasts after the wreck.

The whole question, and the arrangement finally concluded, arose entirely out of the recognition by both parties of the 8-mile zone.



The L
latins
H. J. W
& Urq
Forbes
London
p: I.

p: I

The Law relating to Waters.
H.J.W.Coulson
& Urquhart.A.
Forbes.
London, 1880.
p: I.

Chapter I. Of the Sea and rights therein.
.....

The High Seas.

The high seas include the whole of the seas below low water mark and outside the body of a county. (foot-note I.)

The realm of England only extends to low water mark, and all beyond is the high seas. (foot-note 2.)

The reason of the thing, the preponderance of authority, and the practice of nations, have decided that the main ocean, inasmuch as it is the necessary highway of all nations, and is from its nature incapable of being continuously possessed, cannot be the property of any one State.

p: I. Foot-notes.

- (1) As to this see Reg. v. Keyn, 2 Ex. Div. 63, see post. See also Leigh v. Buzzley, No. 122, per Lord Coke, C.J.
- (2) It seems certainly to have been the general opinion of writers on International Law that the territory of a State extends to the distance of three miles or more, or the distance of a cannon shot, seaward from low water mark; but the case of Reg. v. Keyn, 2 Ex. Div. 63, which will be noticed later, establishes the proposition stated in the text, Cockburn C.J. remarking that writers on International Law, however valuable their labours may be in elucidating and ascertaining the principles and rules of law, cannot make the law. To be binding, the law must have received the assent of the nations who are to be bound by it. This assent may be express, as by Treaty or the acknowledged concurrence of Governments, or may be implied from established usage: see p: 201. Cf. per Lord Kenyon in Blundell v. Catteral, 5 B & A. 268. See also as to this, Selden, Mare Claus., bk. 2 : Hale de Jure Maris. Harg. Tr. p: 10. Grotius de Jure Belli, lib. II, c. 2, s. 13: Bynkershoek de Dom. Mar.: Vattel, Droit des Gens, s. 278: Hautefeuille, Droit Maritime, p: 197: Ortolan, Diplomatie de la Mer, liv. 2, c. 8: Wheaton's International Law, by Boyd, p: 237: Phillimore's International Law, Vol. I, c. 11, and Vol. II, c. 11.

p: 2.

".....The free navigation, commerce, and fishery
"in the high seas is therefore the common right
"of all mankind:(3) and as a physical necessity
"the soil of the bed of the sea can be the ex-
"clusive property of no one individual or nation
"except in those rare cases where a portion of
"the bed of the sea has been beneficially
"occupied for a sufficient time by any one
"nation to give a prescriptive right to that
"portion, by the acquiescence of the other
"nations....."

Ibid.

".....It would also appear, that when the sea or
"the bed on which it rests can be physically
"occupied permanently -- as by the erection of
"piers, harbours, breakwaters,^{or} forts, -- it may
"be the subject of occupation, the same as an
"occupied territory, independently of prescrip-
"tion....."

Foot-note.

(3) Wheaton's International Law, by Boyd, p:251.

"The tree standing on, concrete, and fishery
in the high seas is therefore the common right
of all mankind: (c) and as a physical necessity
the soil of the bed of the sea can be the ex-
clusive property of no individual, or nation
except in those rare cases where a portion of
the bed of the sea has been demarcated
occupied for a definite time by one or
nation to give a representative right to that
portion, or the occupation of the other
nations."

".....It would also appear, that when the sea or
the bed on which it lies can be physically
occupied permanently, as by the erection of
towers, harbours, fortifications, forts,--it may
be the subject of occupation, and such as an
occupation of the sea, the occupation of the sea."

.....
(c) "When only a portion of the sea is occupied, it is not the whole of the sea, but only a portion of it."

*The Law re-
lating to Waters.
H. J. W. Coulson
& Urquhart. A. Forbes.
London, 1880.
p: 8.*

*This appears to be the view taken by
the Legislature, for immediately after
the decision of the case, an Act entitled
"The Territorial Waters Act (41 & 42 Vic.
c. 73.), was passed, defining the territor-
ial waters of Her Majesty's dominions
to be so much of the sea adjacent to the
coast as is deemed by international law
to be within the territorial waters of
Her Majesty, and declaring that for the
purposes of the Act any part of the sea
within a marine league of the coast,
measured from low water mark, shall be
open sea within the territorial waters of
Her Majesty's dominions. It then enacts
"that any offence committed by a person,
whether he is or is not a subject of Her
Majesty within the territorial waters of
Her Majesty's dominions, is an offence
within the jurisdiction of the Admiral,
although it may have been committed on
board or by means of a foreign ship, and
the person who commits it may be arrested
and tried and punished accordingly".....*

The object of the present work is to
 present a complete and accurate
 translation of the original text
 into English. The work is intended
 for the use of students and
 scholars who are interested in
 the history of the language.
 The work is divided into two
 parts. The first part contains
 the original text, and the
 second part contains the
 translation. The work is
 intended to be a complete
 and accurate translation of
 the original text into
 English. The work is
 intended for the use of
 students and scholars who
 are interested in the
 history of the language.

The Law
 and the
 H. J. W. O.
 Urquhart
 London
 p. 3

The Law
 and the
 H. J. W. O.
 Urquhart
 London
 p. 3

The Law re-
lating to Waters.
H.J.W. Coulson &
Urquhart. A. Forbes.
London 1880.
p: 399.

The main ocean is incapable of being the property of any one state, but a nation may acquire exclusive right of navigation therein as against another nation by virtue of the specific provisions of a Treaty (foot-note 4.), or by the tacit acquiescence of such other nation in its appropriation for certain portions for navigation. (foot-note 5.)

Foot-notes.

(4) Phillimore, *International Law*, Vol. I,
pp: 210, 211.

(5) Vattel, *Droit des Gens*, t. I. c. XXIII.

noted to be present at 1000 ft. in

© 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678,

of many other things, as follows:

701-1052 425 202 82 113701 100 145 1000

- From 07/19/86 to 08/01/86

(continued)

THE UNIVERSITY OF CHICAGO

... ..

(Faint, illegible text)

20 171-71-14

1. The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation

172

•TXX.9 • • • • •

S. Senator
Kerran
sch in San
Aug.: 1888
y: Record.
ate. 7ang:
19-Port 8
: 7288.

ditto: p.

In 1888 then was discussion upon
the "marine league" in the Senate of
the United States.
Referring to the Atlantic Fisheries, of
British North American Senator Sherman
said:—

we have just as much right to fish outside of that
marine league as any fishermen of Canada or Great Britain. We hold
that right under the Almighty God, who makes the sea open, accord-
ing to our construction and according to the British construction as
well.

S. Senator
Sherman's
speech in Senate.
Aug. 1888.
Reg. Record.
Vol. 7 Aug. 88
p. 19-20
: 7288.

I believe the whole theory of the treaty and a fair construction of it
was in this direction. A bay was an inclosed water 3 miles from cen-
ter to shore, and by no fair construction between equal peoples could
this meaning be extended beyond that. Therefore, as a matter of
right, I believe that we have just as much right to fish in the bays out-
side of the 3-mile limit as we have anywhere else.

Still this was a subject of controversy, and besides it has been made
a subject of negotiation. We have ourselves negotiated for the exten-
sion of the shore-line to 10 miles, I am told, down in the Gulf of
Mexico. We have ourselves negotiated for an extension of the marine
league. Great Britain, in making treaties with the North German na-
tions, with Denmark, with Sweden, with Russia as to the Baltic Sea
and as to the English Channel, has adopted a new line of demarkation.
Instead of the old marine league, which was the law then, and indeed
is the law of nations laid down by Vattel and all the books on the law
of nations, as the measure which any nation might assert its power
over for its own defense, they have enlarged that in some cases to 6
miles, in some cases to 10 miles by treaties with foreign nations, on the
ground that the great improvements in gunnery, fortifications, and the
like have made it necessary to command an adjacent sea wider than
the marine league.

Therefore, if this was a mere matter of negotiation, as to the bound-
aries of a bay, or whether certain bays ought not to be delimited by a
certain line so as to confer local jurisdiction, that is a matter two friendly
nations ought to sit down and reason about. But, remember that every
foot of sea granted by the United States outside of the marine league is
in excess of the rights stipulated for by Great Britain by the express
terms of the treaty. It was our right to go within 3 miles, and if they
demanded of us or appealed to us to extend that line they were bound
to give us an equivalent, to give some concession to correspond with it,
and then the Government of the United States might properly treat
upon the extension of the marine league.

ditto. p. 289.

S. Gray. H.
 l 19. Hark
 p: 7335.
 each of Sem
 also in U.S.
 with ga.
 the Fisheries
 Treaty 1858

p:

Sh

Senator Smith, The Dickinson had lunch 11:00
at home Sunday -

S Cong. Record.
19. Part 8.
p. 7335.

Speech of Senator
Smith in U.S.
Senate July 24, 1888
on the Fisheries
July 1888.

I ask attention now in regard to these fisheries, to which I have referred as a subject of interest to our people from the history of the Government, and now of as great interest to them as ever. In addition I wish to ask attention to the rules of the law of nations as understood to govern in interpretation or limitation of the territorial rights, as they are called, of the littoral dominion in this or that government over the adjacent seas. It is, I take it, not disputed that all this area of the fishing waters is on the high seas. Wherever it is, if it be below the low-water mark, by the demand and by the consent of all nations the high seas begin. All, then, our right there, as originally established in 1783 and 1815, and as claimed or occupied and enjoyed by other foreign nations, all this fishing by our fishermen is on the high seas. Now, how does there come to be, and to what extent, a deference or a concession over adjacent waters; for without the deference and concession of the nations no nation can claim seaward, beyond that line between high water and low water, at its own will, the power in any sense of appropriating to itself any part of the high seas. The high seas are not capable of appropriation by the demand of one nation, except by the concession of another, or by the general concession governing the rights and needs of all the nations. Whence comes this notion that, although the high seas began where the tide marks its last recession, there is in the littoral shores some advantages accorded to the proprietary government that occupies and exercises dominion over the shores. What is the rule? In the first place, without any discussion of how it comes about, a strip of 3 miles along the shore, in all its sinuosities, measured from low-water mark, is the limit of the conceded right. Then, in regard to bays, recesses, ports, and harbors, this shore or *nomine*, the 3-mile strip, follows the windings of every port and of every bay and of every harbor, but when by concession, either, as I have stated, of explicit and individual concession, or of a general arrangement in regard to ports and bays and harbors not confining the high seas as the common possession of all nations, what does that rest upon? Does it rest upon the right of a foreign nation to expropriate the seas and appropriate the seas as an appurtenant to land by its list or by merely natural and geographical marks? No. As in respect to the original belt of 3 miles, so all the rights in regard to bays, harbors, ports, or what not, it is one of deference or of concession on the part of the nations making up the system, which make and execute what is called the law of nations, determine what are the ports and what are the harbors and what are the bays that under a rightful need and concession of the state whose shores are washed, should be reasonably required and reasonably be conceded by the nations.

What was the extent of deference for these 3 miles? Is it pretended that the ownership within the 3 miles is conceded to the nation whose shores are washed? Has the nation a right to exclude for the purposes of navigation those 3 miles? This never has been pretended; it never has been claimed, and it never has been conceded; it never will be conceded. This belt is high seas for navigation, and there is no concession within 3 miles, *co nomine*, in respect of peaceful navigation, by the nations of the earth. There is a degree of deference—when the superior requirement for the ownership and dominion of the land demands the land's protection in favor of the nation which occupies it—on the part of the nations of the world and they concede for that 3 miles, but respecting only the reasonable degree and measure and force of this special enjoyment, and of the exclusion and diminution of the general and common enjoyment of the high seas.

Then there is a deference in regard to fishing, and that is a general deference, that within 3 miles of the shores, which means the coast, which means the shore, which means the same belt, whether it follows sinuosities or whether it belongs to the trend of the coast, 3 miles from the land is the concession by the law of nations for a ship, and when bays and harbors are to be enlarged into exclusion of foreign fishing without the line of 3 miles from land, then it must be under

p. 7336

Smith.

"the deference that has the domestic purposes of trade
"The population around the bays that are thus appropriated has secured the right to them by the progress
"of influence that secures the control from a foreign
"nation. Was it ever intended that the assumption
"of exclusion from bays for fishing was to depend on
"a geographer or a map-maker because it was called
"a bay instead of being ~~as~~ called a gulf? Are
"Baffin's and Hudson Bay taken from the High Seas
"because the geographers have called them bays and
"not gulfs or seas? Not at all. It is precisely
"this deference of concession and depending entirely
"on whether the over-balancing demands in the particular
"localities should require us to retire from
"the high seas in favour of advantages to the
"shores."

11

9612

p. 7336

p. 7337

ibid.
p. 7336.

There can not be found anywhere any principle in the law of nations that allows a nation to extend its privileges of the land occupation because it wants a larger and larger share of the high seas for the use of its people. A definition has been given, so far as it can be given, on so large a subject.

That is what it means, and a friendly nation, the nation of Great Britain, when brought to face that proposition, will never hold that by the law of nations one nation can enlarge its possessions of fishery or anything else on the high seas, unless the concession is made of retirement for defence that the greater occasion to your nation makes the land dominant over this adjacent sea and we abandon it for that purpose.

Now, Mr. President, I am able to present, fortunately, not a case arising not in connection with these shores or waters, but a case of the greatest importance arising in the courts of Great Britain, and then followed by a statute of right. (Ch. 73, 41 and 42 Vict.)

This case may have attracted the attention of my friend, the Senator from Delaware, and my friend, the Senator from Alabama; and, fortunately, we find in this reported case not mere speculations, not mere appeals to the unwritten law of nations, and argumentative discrimination between individual appropriations by nations as conceded or as disputed. This case arose in this way: The *Franconia*, a German ship, sailing within the belt and only distant about 2 miles from the coast of Dover, in the British Channel, by collision with an English ship within that belt, the *Strathclyde*, not only inflicted injury to the ship itself, but caused the death of several persons on board the English ship. The master of the German ship, the *Franconia*, was indicted for manslaughter, and was tried and convicted of the offense as being committed, as it was claimed, within the British jurisdiction of the 3-mile belt.

Judge Archibald, one of the judges, died before the judgment, but he was known to concur with the majority, and when the majority was counted it was found to be a division of 7 and 6. But what was the contention? That there was no such thing as proprietorship in that belt of the sea on the high seas within one marine league of the coast measured from low water-mark and that the concession of the law of nations governing this 3-mile zone was a concession of defence proceeding on the principles that I have ventured to illustrate, and that that was properly described, as publicists describe it, "*Linea de respectu*" that the limit and extent, though measured for 3 miles, was not a concession of a rightful interference with navigation as an ordinary disturbance of the occupation and parent of navigation within the 3 miles, but that it was limited to these principal points which I have suggested of the 3-mile zone for purposes of defensive protection to the shores, in preclusion of belligerent occupation of that space, and of preservation of the littoral fisheries against intrusion. But there was no pretension that by the law of nations this belt of 3 miles, *ex nomine*, and by that concession was anything more than the ribbon, as it were, drawn along the shores with all their sinuosities. No question arose, no question was disposed of as to what concession could be applied or could be found, except by explicit convention as to rights inside of harbors and bays on the principle I have alluded to.

A nation has no right to exclude foreign nations from the enjoyment of the high seas anywhere except by that concession of deference to the occasions of one power just as properly might be required of another under similar circumstances. The question of deferential concession is not what it ought to be; the question is, what was by the law of nations and had been accepted. In respect of belligerency and in respect of fishing, the 3 miles belt drawn along the shores was the only rule that has ever been by a consensus of nations laid down.

Lord Cairns, then lord chancellor, considering this a very grave decision, important to British interests, and, therefore, quite important to foreign interests, too, brought in a bill not long after for the action of Parliament on the subject, which in due course was passed.

Let me call particular attention, then, to this, the only parliamentary imperial law on the subject of designation and demand of extension of peculiar privileges on littoral waters of the high seas. This is chapter 73, of 41 and 42 Victoria. This proceeds to extend this jurisdiction of punishment, and the only point interesting to us is to ascertain how far this imperial assertion proposed for foreign nations to consider and itself thought right to go. By this act of Parliament the jurisdiction of the admiralty, for the purpose in view, is described, and then the operative clause of the act proceeds:

"The territorial waters of Her Majesty's dominions," in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions as are deemed by international law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offense declared by this act to be within the jurisdiction of the admiralty, any part of the open sea within 1 marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions.

Here, then, we have an explicit statement by an imperial statute of what the law of nations is supposed to concede in regard to the strip of the high seas.

We claim that on the seas between the capes of the Delaware there is a shore occupation, a commerce, a prevalence of land interests, and of trade and of custom laws, and all that marks a shore occupation by our populations, which make it impossible that we should allow the course of these uses of the bay to be treated as still open, as will, to general and equal use of all nations as of the high seas.

We claim that the waters of this bay are embraced within the land, held *inter fauces terre*, and the foreign nations concede it, if it seems reasonable to them; and if it does not seem reasonable to them, then they raise the question about it and try conclusions with us, and upon reconsideration, if we still insist upon that authority, undoubtedly it would be conceded.

8.
p. 227

~~4-7327~~

/8

For instance, if on board an American ship a murder should be committed while it was sailing within 3 miles of the British dominion in any part of the world, and then that ship should pursue its navigation and bring its burden of witnesses and accused to the courts of this country, where we would have full jurisdiction under our Constitution and our laws, can it be pretended that if an indictment should be found in a British court a demand would be made against this Government for a surrender of the criminal under the extradition treaty of 1843?

This statute, considering it as stopping short, both in area and in demand, as I have stated it, has gone too far and too fast, probably, for the concessions of foreign nations. Whenever a case shall arise the cautionary provisions of this statute require that the presumptive course of law shall not take place until one of the principal secretaries of state shall consider it and thus bring the government face to face with a foreign nation before that government should undertake to execute that law against the subject of a foreign jurisdiction.

Nor would this country ever tolerate, in my opinion, such an execution of criminal law upon a citizen of the United States for a crime happening on an American ship sailing within 3 miles of the coast of Dover or any other part of the United Kingdom.

With now to allude to fishing vessels and to the fisheries in their interests and values as profits and as pursuits.

There are three elements requisite in the prosperity of the fishery—in the prosperity of this fishery.

One is the fishing waters, as being the habitat and the resort of fishes that are objects of pursuit. A "fishery" without fish, waters without fish, are not a fishery, although you may have a right to fish there.

The next element is of the relation of shores to those waters. The nation that owns the shores has certain advantages in the pursuit of fishing in these adjacent waters, and foreign nations not bounding the fishing waters are at a disadvantage in that respect.

The third element is the market, for nobody catches fish, although the bay is full of them, and although the shore is lined with shelter and protection, if there is no market to consume the fish.

Now, of these three elements, one, the fishing waters, are of common participation between the Province and our people, within such lines of limitation as may be, we will say. They are shared with us—we enjoying only such limited access to the treatise allow. But we have the market and they have not. There is the trouble. Markets abroad, common to us both, they really drive us out of by their advantage in uniting the fisheries and the fishing shores, so that they more cheaply could pursue their industries, and what was once an extensive and profitable commerce to our early settlements on our coast—mean of the West Indies, of Spain, etc.—they could successfully compete with us and drive us out, simply by the advantage. Of this, their advantage, we make no complaint.

my: Record
19 Part 8.
50 Cong. 1
Fish of Sea
in U.S. Sea
Aug 1888.
the Fisheries
Aug 1888.

my: Record
19 Part 8. p.
50 Cong. 1
Fish - in U
Aug 1888.
the subject of
Fisheries in
1888.

Senator Call said:

It is true that upon

the coasts of the ocean generally, without reference to the *clausum mare* or the principle of *inter fauces terrarum* or the waters inclosed within the jurisdiction of a sovereign power—it is true that outside of these limitations, as a rule of convenience, the jurisdictional power of a country has ordinarily been held to extend to the distance of a cannon shot, or a marine league, or 3 miles from the shore; sometimes one and sometimes the other.

ing: Record.

19. Part 8. p. 744-2.

50 Cong. 1 Sess.

speech of Senator

Call in U.S. Senate.

3 Aug 1888.

the Fisheries

July 1888.

ing: Record.

19. Part 8. p. 7449

50 Cong. 1 Sess.

speech - in U. S.

July 13 Aug 1888

the subject of
Fisheries Treaty

1888.

Senator Frey said:—

~~Mr. Frey~~ I quite agree with the proposition which the Senator from Alabama suggests. Undoubtedly the territorial ribbon of 3 miles which by international law attaches to the coast of a country under our peculiar system belongs to the State to which it is attached.

Record.

2: 19. Part 8

7729.

ate: Aug 20-

ator Enwanton

fisheries Treat

1888.

~~Thix~~

Sh

7

Sh
p

g. Record.
p. 19. Part 8.
7729.
date: Aug 20 - 1888.
ator Swanton
Fishes Treaty
1888.

*The following are extracted from
the
Memorandum
of the
Secretary of State
to the
President
of the
United States
of America
dated
August 20, 1888.*

I had occasion to discuss with the Spanish Government when we had conditions of disturbance in the island of Cuba, and that government was planning to exercise power to stop our vessels and board them in the pursuit of their commerce seeking the Gulf of Mexico in the channels that brought them within the 3 leagues that they claimed the right to have. I contended that such right except in war, and the fact that they had no state of war on that island did not permit them to interrupt our commerce, although the channels and the currents between the island required us to pass within six miles. That is the difference between the two subjects, and it is of great importance.

But if it is necessary, as in the case of the French and English possession of a fishery, that the fishing grounds shall be patrolled by the ships of both nations, and an authority, a tribunal, and an examination that shall be common, without oppression, and shall be impartial between them, then we take as matter of complaint one side or the other of the actual dimensions of our encroachments and of your insistence upon them, and then they are other grievances that are to be adjusted between two nations according to the magnitude of the great interests between them, obliterating of course all these subjects of contention, all these great topics of peace, of enlargement, of civilization.

*Shid
p. 33.*

This idea of concession was doubtless the ground and guide upon which the treaty of 1818 was founded. At the time of that treaty the United States claimed (and justly as the committee thinks) that the fishing rights recognized by the treaty of 1783 on all the shores of British North America were property rights and that they were not lost by the war of 1812, and that after the treaty of peace of 1814, which made no mention of the subject, those rights existed with all their original force.

The British Government insisted upon the contrary and that the right of citizens of the United States to fish in any British North American waters had been entirely lost. This led to a partition of the disputed territory—whether wise or unwise is immaterial to the present question—but in making this settlement the contracting parties had evidently in view the then understood law of nations, that territorial waters only extended to three miles from the shore;

*Shid
p. 34.*

The only possible question that could fairly arise under the treaty of 1818 was the question what was a British bay. But the question, as a practical one, has been in all the sixty-nine years since the making of that treaty of little or no account, for so far as is known, the only seizure of an American vessel by the British authorities for fishing more than 3 miles from the shore in a bay more than 6 miles wide was the seizure of the *Washington*, in 1843, and in that case, as has been before stated, the international umpire decided the seizure to have been an illegal and unjust one.

Grade
Aug. 1st
ss. Dae
to 109
p. 2

~~Aug. 1st~~
to 109
p. 2
1888

U.S.

The
7

The
p

*the following cases are based on
the Senate in 1885*

*Ex. 109
p. 21
Circular of the
1888*

The question of the extent of territorial dominion, as it respects the exercise of fishing rights in bays more than 6 miles wide indenting the shores of a country, must of course be determined by the law and practice of nations as they existed in the year 1813, at which time, as the committee thinks, the 3-miles limit from shores was recognized without regard to large indenting bays, except under very peculiar circumstances, such as the prescriptive exercise of dominion, etc. Whether, in view of recent inventions in the implements of warfare, it may not be politic for maritime nations to agree upon an enlargement of the boundaries of their territorial dominion seaward is a question well worthy of consideration, but it has no place in respect of the matters now in hand.

~~The supposed precedent for such arrangements as are set up in this treaty, of the convention of 1882 (Ex. Doc. 113, p. 18), between Great Britain, Germany, Belgium, Denmark, France, and the Netherlands, is very far indeed from being such. That was for the police regulation of the fisheries in the North Sea, and on the coasts of all the contracting parties. It was limited to five years, and not perpetual, as this treaty is. It neither granted nor renounced any right. The freedom of navigation, etc., inside the 3-mile limit was reserved. The naval vessels of the respective powers were to enforce the regulation. For serious infractions not settled at sea the offending vessel was to be taken to a port of her own country for trial.~~

*Shid
p. 33.*

This idea of concession was doubtless the ground and guide upon which the treaty of 1818 was founded. At the time of that treaty the United States claimed (and justly as the committee thinks) that the fishing rights recognized by the treaty of 1783 on all the shores of British North America were property rights and that they were not lost by the war of 1812, and that after the treaty of peace of 1814, which made no mention of the subject, those rights existed with all their original force.

The British Government insisted upon the contrary and that the right of citizens of the United States to fish in any British North American waters had been entirely lost. This led to a partition of the disputed territory—whether wise or unwise is immaterial to the present question—but in making this settlement the contracting parties had evidently in view the then understood law of nations, that territorial waters only extended to three miles from the shore:

*Shid
p. 34.*

~~The only possible question that could fairly arise under the treaty of 1818 was the question what was a British bay. But the question, as a practical one, has been in all the sixty-nine years since the making of that treaty of little or no account for, so far as is known, the only seizure of an American vessel by the British authorities for fishing more than 3 miles from the shore in a bay more than 6 miles wide was the seizure of the *Washington*, in 1843, and in that case, as has been before stated, the international umpire decided the seizure to have been an illegal and unjust one.~~

Search

Aug. 1. 1881

Dec. 8

1881

~~1881~~

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

~~Search~~
~~Aug. 1 Recd~~
~~Nov. 200~~
~~Nov 109~~
~~to~~ ~~to~~
~~in early Refund~~

~~Had~~
~~81-82~~

note 50 Copy 1 less
in Dec. No. 109
p. 22-52

~~...seining has reconstituted the mackerel fishery almost entirely
and has largely affected the herring fishery, and has given to our fisher-
men great advantages in the catch. But Canadian capital and
energy will not long permit us to do all the purse or deep-water seining.~~

~~Our claims could not be fairly predicted, diplomatically, on such an
admission by Great Britain as to the baseline from which the 3-mile
limit is to be measured.~~

~~That being still an open question, the claim of either side were a
necessary feature in the negotiation of this treaty.~~

~~If our contention was indisputably just, a peremptory demand for its
allowance was the only course we could adopt. Such a demand, we
believe, has never been formally made by this Government. Congress
certainly has never affirmed the indisputable justice of our claim. The
United States have preferred to let this question, with all the others that
have arisen under the treaty of 1818, continue in reach of discussion
and negotiation.~~

~~In that situation the present administration found this controversy.~~

~~Mr. Bayard proposed to the British Government that the 3-mile fish-
ing limit should be measured, in the bays that were 10 miles or less in
width, from that point nearest the entrance where the shores are 10
miles distant from each other. He found his support for that offer in
the arrangement between Great Britain and other European nations for
fishing in the bays and harbors of their respective coasts along the
North Atlantic and the northern seas.~~

~~It being generally conceded that the limit of local jurisdiction extended
3 miles from the coast out into the sea, and that this distance
was adopted because it measured the range of artillery in ancient times,
it is obvious that when the range of artillery is extended to 5 miles it
is due to the security of bays and harbors reaching far inland that
treaty arrangements fixing a new measurement should have some refer-
ence to the increased limits for the protection of the people residing
along such shores corresponding with the improved range of artillery.~~



OCEAN FISHERY RIGHTS

IN TERRITORIAL

AND EXTRA-TERRITORIAL WATERS.

*An Address delivered before the Conference of
the Association for the Codification of the
Law of Nations, at the Town Hall,
Liverpool, 29th August, 1890.*

BY

SIR GEORGE BADEN-POWELL, K.C.M.G., M.P.

LIVERPOOL:

C. TOLLARD AND CO., PRINTERS, VICTORIA STREET.

1890.

in the Extent of Coast to
Articles VI and VII of the
February 16 (28), 1825,
Great Britain and Russia,
expressly intended to apply.

are the first five Articles of the
Convention sent by Mr. G. Canning
Her Majesty's Ambassador at
St. Petersburg, 1824:—

ARTICLE I.

In the High Contracting Parties that
shall enjoy the right of free
navigation throughout the Pacific Ocean,
and within Behring's Straits, and shall
not be molested in carrying on their trade
with the said ocean, either to the
north or south thereof.

It is understood that the said right of fishery
shall be enjoyed by the subjects of either of the two
Contracting Parties from the respective
coasts of the said ocean.

ARTICLE II.

It is agreed that the possessions of the two
Contracting Parties upon the continent and the

islands of America to the north-west shall be drawn in
the manner following:

"Commencing from the two points of the island called
'Prince of Wales' Island,' which form the southern
extremity thereof, which points lie in the parallel of
54° 40', and between the 131st and 133rd degree of west
longitude (meridian of Greenwich), the line of frontier
between the British and Russian possessions shall ascend
northerly along the channel called Portland Channel, till
it strikes the coast of the continent lying in the 56th
degree of north latitude. From this point it shall be
carried along that coast, in a direction parallel to its
windings, and at or within the seaward base of the
mountains by which it is bounded, as far as the 139th
degree of longitude west of the said meridian. Thence
the said meridian line of 139th degree of west longitude,
in its extension as far as the Frozen Ocean, shall form the
boundary of the British and Russian possessions on the
said continent of America to the north-west.

OCEAN FISHERY RIGHTS

IN TERRITORIAL
AND EXTRA-TERRITORIAL WATERS.

*An Address delivered before the Conference of
the Association for the Codification of the
Law of Nations, at the Town Hall,
Liverpool, 29th August, 1890.*

SIR GEORGE BADEN-POWELL, K.C.M.G., M.P.

LIVERPOOL:
C. THRELING AND CO., PRINTERS, VICTORIA STREET.
—
1890.

in the Extent of Coast to
Articles VI and VII of the
February 16 (28), 1825,
Great Britain and Russia,
expressly intended to apply.

are the first five Articles of the
Convention sent by Mr. G. Canning
Her Majesty's Ambassador at
St. Petersburg, 18th July, 1824:—

ARTICLE I.

On the High Contracting Parties that
shall enjoy the right of free
navigation throughout the whole extent of the Pacific Ocean,
within Behring's Straits, and shall
not be molested in carrying on their trade
throughout the said ocean, either to the
north or south thereof.

It is understood that the said right of fishery
shall be enjoyed by the subjects of either of the two
Contracting Parties in the marine leagues from the respective
coasts.

ARTICLE II.

It separates the possessions of the two
Contracting Parties upon the continent and the
islands of America to the north-west shall be drawn in
the manner following:

"Commencing from the two points of the island called
'Prince of Wales' Island,' which form the southern
extremity thereof, which points lie in the parallel of
54° 40', and between the 131st and 133rd degrees of west
longitude (meridian of Greenwich), the line of frontier
between the British and Russian possessions shall ascend
northerly along the channel called Portland Channel, till
it strikes the coast of the continent lying in the 56th
degree of north latitude. From this point it shall be
carried along that coast, in a direction parallel to its
windings, and at or within the seaward base of the
mountains by which it is bounded, as far as the 139th
degree of longitude west of the said meridian. Thence
the said meridian line of 139th degree of west longitude,
in its extension as far as the Frozen Ocean, shall form the
boundary of the British and Russian possessions on the
said continent of America to the north-west.

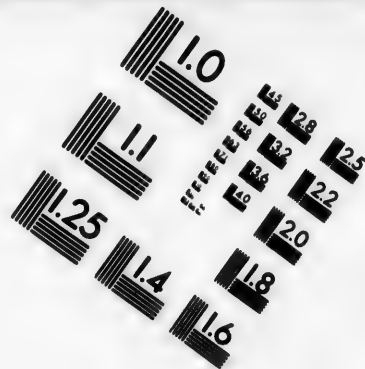
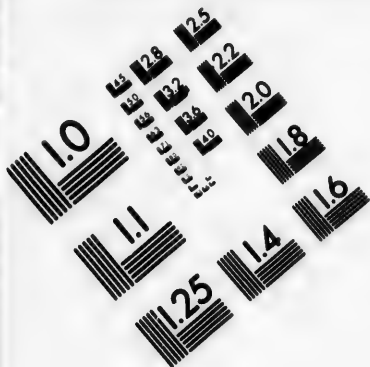
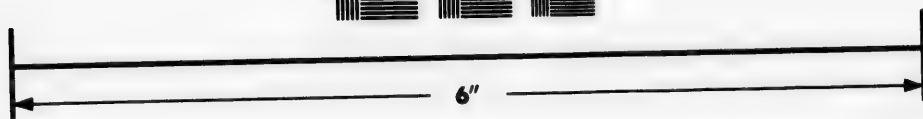
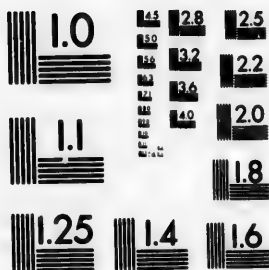
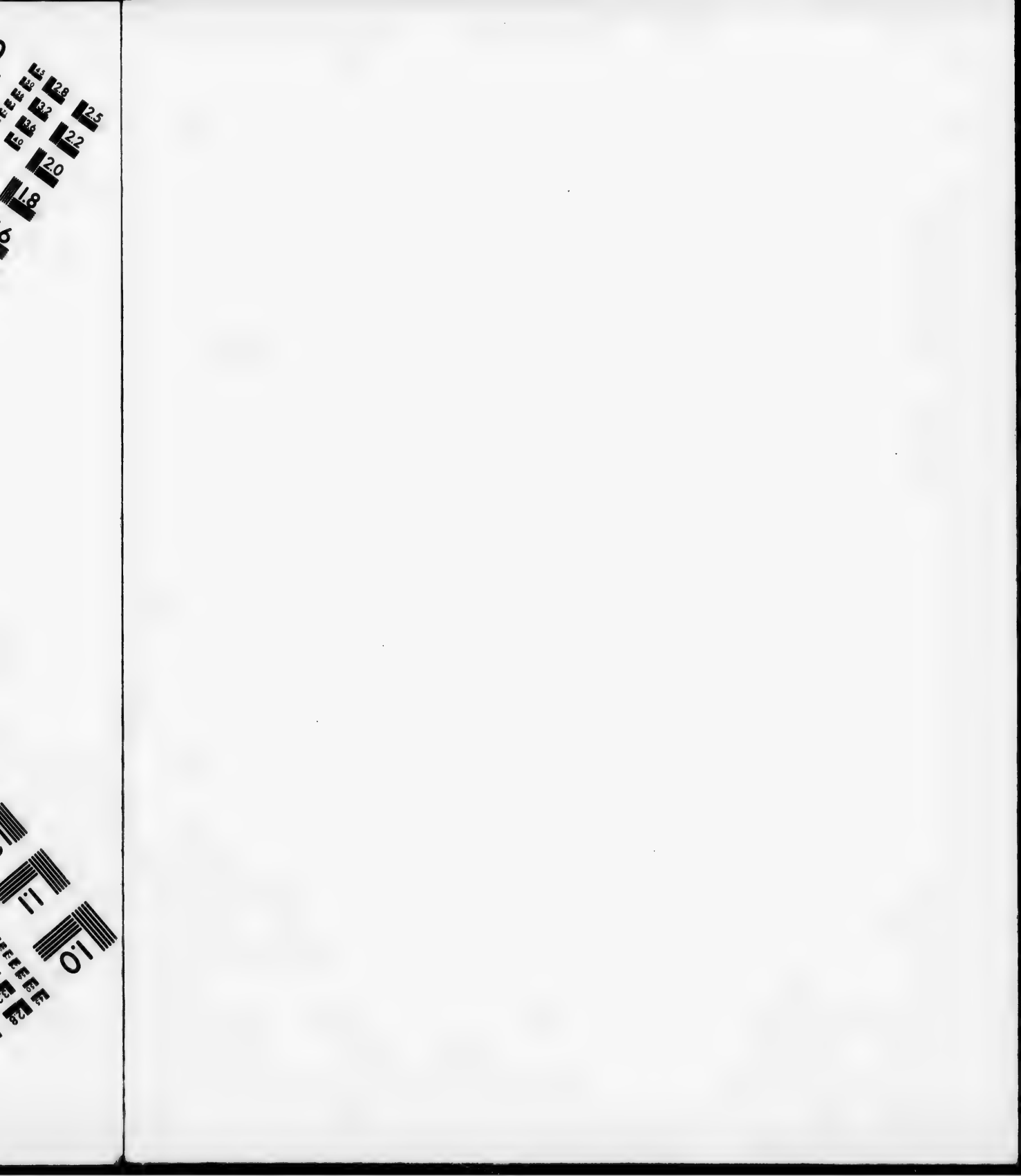


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4303



RIGHTS OF FISHERY.

IN TERRITORIAL
AND EXTRA-TERRITORIAL WATERS.

INTRODUCTORY.

The somewhat technical title of this address defines a subject which just now claims a large share of public attention, and which has been in the past the cause of serious disputes among nations.

In addressing a conference of this association I wish, however, to confine myself to the international aspect of the subject — that is to say, to those rights of fishery in the open sea, which belong to any one nation or to all nations in common.

At the present moment rival claims to such rights of fishery are creating grave international complications in various parts of the world. In Behring Sea and the North Atlantic the United States and the United Kingdom are in active dispute; in Newfoundland we find ourselves contesting the claims of France. In recent years in the European waters of the North Sea fishery rights have been the subject of international discussion, and happily of international agreement; while seas adjacent to Australia and Ceylon fishery rights are claiming the serious attention of the Governments concerned. Perhaps the main reason for the growing importance of ocean fishery rights is the rapid increase in means of marine locomotion, coupled with the rapid growth of the population, and the new facilities with which capital accumulates and devotes itself to new openings all the world over. Fishes in London manage steam and sailing vessels collecting pearl shell in the Indian Ocean or beche-de-mer

in the Extent of Coast to
Articles VI and VII of the
February 16 (28), 1825,
Great Britain and Russia,
specially intended to apply.

are the first five Articles of the
Convention sent by Mr. G. Canning
Her Majesty's Ambassador at
17th July, 1824:—

ARTICLE I.

Between the High Contracting Parties that
shall enjoy the right of free
whole extent of the Pacific Ocean,
within Behring's Straits, and shall
be protected in carrying on their trade
of the said ocean, either to the
and thereof.

It is understood that the said right of fishery
by the subjects of either of the two
marine leagues from the respective

ARTICLE II.

It separates the possessions of the two
upon the continent and the

islands of America to the north-west shall be drawn in
the manner following:

"Commencing from the two points of the island called
'Prince of Wales' Island,' which form the southern
extremity thereof, which points lie in the parallel of
54° 40', and between the 131st and 133rd degree of west
longitude (meridian of Greenwich), the line of frontier
between the British and Russian possessions shall ascend
northerly along the channel called Portland Channel, till
it strikes the coast of the continent lying in the 56th
degree of north latitude. From this point it shall be
drawn along that coast, in a direction parallel to its
windings, and at or within the seaward base of the
mountains by which it is bounded, as far as the 139th
degree of longitude west of the said meridian. Thence
the said meridian line of 139th degree of west longitude,
in its extension as far as the Frozen Ocean, shall form the
boundary of the British and Russian possessions on the
said continent of America to the north-west.

in the Pacific. British capital earns large profits from the regulated capture of fur seals in the North Pacific; Frenchmen in St. Malo work large and profitable cod fisheries in Newfoundland and Iceland; sealers from all quarters—Nova Scotia, Hawaii, Japan, California, and British Columbia—are concentrating their energies in the Northwest Pacific, which is now the one remaining habitat of the valuable fur seal. Out of some 400,000 sealskins brought to market in 1889 only 10,000 were obtained outside the North Pacific, where the seals still breed in millions on the Pribilof, Commander, and Lofot Islands.

Happily, also, there is a growing disposition in these days for nations to determine these strictly industrial questions by the peaceful means of negotiation and arbitration.

In the old days the whalers in the South Seas or Baffin Bay exercised a rough justice one with the other in the absence of all controlling powers. Ownership of the whale depended on "first harpoon in;" and the manoeuvring and racing with this object in view lent a picturesque and exciting element to an otherwise unavailing pursuit. Again, in the old-established cod fisheries in Nova Scotia and Newfoundland, the fishermen adventurers who came over annually from Europe established a rough administration amongst themselves, electing one of their number as admiral of the fishing fleet for the year, and entrusting him and his colleagues with certain powers to be exercised for the common good. But in those days all joined to work in common the common right of the harpent of the ocean on the principle that all sea fish were unappropriated and sea fishing came under the legal maxim, "*Res nullius cedit occupanti*." In those days, also, no State could well interfere or exercise jurisdiction, for such seas were too remote. A sailing man-of-war could indeed hover round, but she could not be in constant or immediate communication with any administrative base. Nowadays, however, with the telegraph and steam any State can readily exercise jurisdiction in any part of the ocean.

For these reasons it becomes of very special importance to set out fully the conditions under which rights of fishery on the ocean can or shall be enjoyed in these days.

RIGHTS DEFINED.

In limine it is well to define our subject. The meaning of the term "Fishery" is much in dispute. Presumably the term means the catching of fish; but then what are fish? At one time the Roman Catholic Church was greatly exercised as to whether porpoise was fish or flesh, and could or could not be eaten in Lent, with a view to the mortification of the body. On the one hand the earnest would argue that the porpoise was a warm-blooded mammal breathing the upper air. On the other, the philosopher would assert that it lived and moved and had its being entirely in the sea. So far in these days we hear that in Newfoundland the French were given the treaty right "to catch fish and dry them on the shore." They now set up lobster canning factories, and the Newfoundlanders object that lobsters are not fish, and certainly canning is not "drying." Whales again are "fish" par excellence to the whaler whatever the naturalist may say.

On this occasion we are dealing generally with the "fructus" or harvest of the sea, and shall therefore have to adopt the wider definition of Fish as "any living being that inhabits the sea," and "Right of Fishery" as the right of an individual to capture such "fish."

These rights, again, are either "natural" or "acquired." According to the great authority Kent (Commentaries, page 28.) "The free use of the ocean for navigating and fishing is common to all mankind, and the public jurists generally and explicitly deny that the main ocean can ever be appropriated." The fish of the sea are the property of nobody until caught. Such is a bald statement of the natural right in the abstract. But with civilisation spreading fast over the world complex limitations of the "natural right" rapidly arise, just as over large areas of land nowadays the natural right of the individual to capture *ferre natura* has become in nearly all lands very much circumscribed.

There thus grow up on the sea acquired rights of fishery—by custom and prescription, by the right of the strong, by mutual agreement, and by treaty. In these latter days the last method is acquiring new and more constant force—a most desirable consummation provided due respect be

in the Extent of Coast to
Articles VI and VII of the
February 16 (28), 1825,
at Britain and Russia,
specially intended to apply.

are the first five Articles of the
Convention sent by Mr. G. Canning
Her Majesty's Ambassador at
St. Petersburg, 17th July, 1824:—

ARTICLE I.

Between the High Contracting Parties that
shall enjoy the right of free
navigation of the whole extent of the Pacific Ocean,
between Behring's Straits, and shall
be unmolested in carrying on their trade
of the said ocean, either to the
north or south thereof.

It is understood that the said right of fishery
shall be enjoyed by the subjects of either of the two
High Contracting Parties from the respective

ARTICLE II.

It separates the possessions of the two
High Contracting Parties upon the continent and the
islands of America to the north-west shall be drawn in
the manner following:

"Commencing from the two points of the island called
'Prince of Wales' Island,' which form the southern
extremity thereof, which points lie in the parallel of
54° 40', and between the 131st and 133rd degree of west
longitude (meridian of Greenwich), the line of frontier
between the British and Russian possessions shall ascend
northerly along the channel called Portland Channel, till
it strikes the coast of the continent lying in the 56th
degree of north latitude. From this point it shall be
carried along that coast, in a direction parallel to its
windings, and at or within the seaward base of the
mountains by which it is bounded, as far as the 139th
degree of longitude west of the said meridian. Thence
the said meridian line of 139th degree of west longitude,
in its extension as far as the Frozen Ocean, shall form the
boundary of the British and Russian possessions on the
said continent of America to the north-west.

paid to two conditions. In the first place, even with the best of technical knowledge at command, it is almost impossible to draft treaty engagements which shall provide against all the contingencies of the future. New conditions are sure to supervene. For instance, the failure of the Treaty of Washington, made so lately as 1871, is in great part due to the fact that the cod, and especially the mackerel, have changed their haunts, and thus rendered nugatory many of the stipulations of that treaty.

In the second place it should become customary to revise these treaties as circumstances alter, and in deciding on the actual alterations it would be well if arbitration was more commonly utilized. In the present Newfoundland difficulty there should be no hesitation whatever in entrusting to arbitration the definitions of the right of the very ancient treaty which still regulates fishery rights on the French shore. The decision of the arbitrators should be adopted with the direct object of buying out the French, which is the only method of putting an end to a troublesome and perennial dispute.

Fishery rights in the ocean are thus defined. We also see that they may be individual rights held by the citizens of some one nation, or common rights open to the citizens of all nations on equal footing. This will depend on whether they exist within or outside territorial waters.

IN TERRITORIAL WATERS.

It is generally claimed, and is certainly becoming an accepted axiom, that within territorial waters the citizens of the controlling state have full rights to the exclusion of citizens of all other states. Mr. Seward laid this down very explicitly on behalf of the United States in 1862:—"The sea is open to all nations, but there is a portion of the sea adjacent to every nation over which the sovereignty of that nation extends to the exclusion of every other political authority." There are what Sir Travers Twiss has well termed "jurisdictional waters." There no longer exists any doubt as to the rights of sovereignty a nation possesses over its territorial waters, and this right may be taken by common usage to include the "fructus" of the waters. It is true that the fundamental motive in claiming such sovereignty is the security

of the state, but there abides also the principle, known to Roman Law, that navigable rivers and coast waters are national property free to all citizens of the nation but not to foreigners, especially in regard to the "franchise."

We need not discuss here the rights of private individuals or of the State to regulate fisheries or appropriate the results, nor need we discuss the unsettled question of the landward limit of territorial waters. All such matters are purely national concerns. The international aspect is found when we discuss the seaward limits of such waters and thus determine where international rights begin.

Here again the common opinion is that the 3 mile limit marks the dividing line. Thus when Spain claimed a 6-mile limit around Cuba the United States declined to agree "not being prepared to admit that Spain, without a formal concurrence of other nations, can exercise exclusive sovereignty upon the open sea beyond a line of three miles from the coast, so as to deprive the Americans of the rights common to all nations on the sea."

But the 3-mile limit is not of universal application. Four miles is the accepted limit in Norway. At Berwick-on-Tweed, a distance seaward of five miles is claimed for fishery purposes. In British and American law twelve miles is the declared limit for various quarantine and customs purposes. The United States Government has also held (Mr. Bayard's letter, May, 1886) "The sovereignty of the shore does not extend beyond three miles from low-water mark. But . . . there is no fixed rule defining the distance from the coast within which a nation can make seizures to prevent the violation of its own laws." There is thus much latitude to be allowed as to seaward limits. It is not probable, however, that the consensus of nations would ever be accorded to the extreme views put forward by Mr. Dana at the Halifax Conference, when he contended that a fisherman could pursue free-swimming fish even within the said three-mile limit, provided he did not touch bottom with anchor, trawl, or weighted bait-line.

It may, however, be generally asserted that within territorial waters, whatever the limit seaward, the nation enjoys full right of fishery to the exclusion of all foreigners not admitted by special treaty or permission.

in the Extent of Coast to
cles VI and VII of the
February 16 (28), 1825,
at Britain and Russia,
vely intended to apply.

are the first five Articles of the
ention sent by Mr. G. Canning
Her Majesty's Ambassador at
th July, 1824:—

"ARTICLE I.

in the High Contracting Parties that
ets shall enjoy the right of free
whole extent of the Pacific Ocean,
within Behring's Straits, and shall
molested in carrying on their trade
ts of the said ocean, either to the
d thereof.

stood that the said right of fishery
by the subjects of either of the two
marine leagues from the respective
r.

ARTICLE II.

eparates the possessions of the two
ties upon the continent and the

islands of America to the north-west shall be drawn in
the manner following:

"Commencing from the two points of the island called
'Prince of Wales' Island,' which form the southern
extremity thereof, which points lie in the parallel of
54° 40', and between the 131st and 133rd degree of west
longitude (meridian of Greenwich), the line of frontier
between the British and Russian possessions shall ascend
northerly along the channel called Portland Channel, till
it strikes the coast of the continent lying in the 56th
degree of north latitude. From this point it shall be
carried along that coast, in a direction parallel to its
windings, and at or within the seaward base of the
mountains by which it is bounded, as far as the 139th
degree of longitude west of the said meridian. Thence
the said meridian line of 139th degree of west longitude,
in its extension as far as the Frozen Ocean, shall form the
boundary of the British and Russian possessions on the
said continent of America to the north-west.

IN EXTRA-TERRITORIAL WATERS.

In the open ocean, generally speaking, the supply of fish is inexhaustible, but there do exist particular areas or particular fisheries, where the harvest of the sea may be destroyed, or the mutual rights of the fishermen ignored unless some controlling authority is set up to protect the interests of all concerned.

Let me illustrate these two points. We have the notable and pressing case of the fur seals in the Northern Pacific. The seals breed on the Commander and Pribilof Islands in the months of July, August, and September; for the remainder of the year they travel away 3,000 miles south in search of food, and return in time for the breeding season. About 200,000 seals are judiciously captured on these breeding islands each year, but at least 50,000 seals are captured at sea at various points over the 3,000 mile route. Perhaps one-third of this latter total are captured in the narrow channels between the Aleutian Islands and other waters within 100 miles of the breeding places. The owners of these islands, leased from the United States and Russian Governments, are asserting that the indiscriminate capture, which only commenced in 1884, of seals out at sea, and especially in the channels leading to the islands, is already materially reducing the number of seals coming to breed. They point out that precisely similar killing has positively destroyed the whole of the fur seal captures in various groups of islands in the South Seas, and they maintain that they have an equitable claim that the seals they protect in their breeding places shall not be exterminated by being thus "hired" for at sea.

On the other hand, quite a large industry exists for catching seals at sea. It appears to me that these sealers have quite as much right to capture the seals at sea as the lessees of the islands have to capture the seals on shore, and they maintain that they have an equitable claim that the numbers of seals frequenting the open sea shall not be diminished by wholesale slaughter on the rockeries. Both sides claim protection for the seals. It may here be noted that when Russia claimed the exclusive right of whaling and fishing to the north of the 51st parallel of latitude in the Pacific

the United States at once claimed equal rights; and when, in 1822, the Russian brig Pearl was seized by the Russians for whaling in Behring Sea, release and compensation were promptly demanded and accorded.

Thus in regard to the Behring Sea fur seal fishery the American claim the right to control the fishery even hundreds of miles from the breeding islands, while fishers in the open sea far from land demand the right to continue their operations, and not to have the supply diminished by injudicious slaughter in the breeding islands.

Another case in point is the pearl-shell fishery in the Indian Ocean. This valuable commodity, worth from £150 to £180 in the London market, is obtained by the employment of some 80 or 90 British vessels in an area of the Indian Ocean adjacent to Western Australia.

It so happens that this portion of the ocean is included within the boundaries of the colony as set out in the commission to the Governor of the colony in 1850, although extending over an area of ocean 600 miles in width. The colony now maintains a revenue vessel on the fishing ground to control the fishing, administer justice and aid in securing that the fishing vessels pay customs duties on the stores they use. The colony levies licence fees (of £1 per vessel) and an export duty of £2 per ton on pearl shell landed, in order to meet the necessary expenditure.

But the fishing takes place, in the main, outside the three mile limit; and the Colonial jurisdiction is not supposed to extend so far. Thus practically, the duties can only be levied on British vessels at sea or on those which come into port in Western Australia to refit, to land cargoes, &c. Foreign vessels could be exempt, provided they did not enter an Australian port, but frequented some non-Australian port. In such case the increased distance might prove more expensive than the light dues levied.

The right to charge these dues and to exercise this control outside the three mile limit is based on an act of the Federal Council of Australasia, which (Federal Council act, 1885 section 15) enacts that the council shall have legislative authority, inter alia, in respect of "fisheries in Australian waters outside territorial limits." In 1889 this council passed an act to

in the Extent of Coast to
cles VI and VII of the
February 16 (28), 1825,
at Britain and Russia,
sively intended to apply.

are the first five Articles of the
ention sent by Mr. G. Canning
Her Majesty's Ambassador at
th July, 1824:—

ARTICLE I.

on the High Contracting Parties that
ets shall enjoy the right of free
whole extent of the Pacific Ocean,
a within Behring's Straits, and shall
molested in carrying on their trade
rts of the said ocean, either to the
d thereof.

stood that the said right of fishery
by the subjects of either of the two
marine leagues from the respective
r.

ARTICLE II.

eparates the possessions of the two
ties upon the continent and the

islands of America to the north-west shall be drawn in
the manner following:

"Commencing from the two points of the island called
'Prince of Wales' Island,' which form the southern
extremity thereof, which points lie in the parallel of
54° 40', and between the 131st and 133rd degree of west
longitude (meridian of Greenwich), the line of frontier
between the British and Russian possessions shall ascend
northerly along the channel called Portland Channel, till
it strikes the coast of the continent lying in the 56th
degree of north latitude. From this point it shall be
carried along that coast, in a direction parallel to its
windings, and at or within the seaward base of the
mountains by which it is bounded, as far as the 139th
degree of longitude west of the said meridian. Thence
the said meridian line of 139th degree of west longitude,
in its extension as far as the Frozen Ocean, shall form the
boundary of the British and Russian possessions on the
said continent of America to the north-west.

"regulate the pearl shell and beche-de-mer fisheries in Australian waters adjacent to the colony of Western Australia." In 1888 a similar act had been passed dealing with the fisheries in the seas adjacent to Queensland (on the east coast).

It is further to be remembered that in such cases except there be some formulated public right, none only is indiscriminate and injurious fishing carried on, but there is no law between man and man. For instance, common law does not prevail, and any fisherman can and may use the right of the stranger and past previous occupants of any particular ground. In the North Sea these evils were very seriously felt. For instance, a powerful trawler would sail "right over" long lines or drift nets, and fishing vessels did actually carry various instruments constructed for the sole purpose of cutting the lines and nets of others, which they might find to be in their own way. Thus in regard to extra-territorial waters the preservation of the "fish" and the mutual rights of the fishermen are with difficulty preserved in the absence of any common compelling power. And yet in several places at the present time great damage will be done to the common rights of fishery unless some police control is set up. The uncontrolled greed of the individual may easily destroy the industry, to an equal share in which so many other individuals have an equitable claim.

REMEDIES.

I have endeavored to indicate in outline what is the present condition of the rights of fishery in the sea. I need scarcely enter into the interesting account of the value of these ocean fisheries to mankind, of their products in foods and articles of commerce—fish, salt fish, oils, furs, pearls, and pearl shell, coral, sponges, bones, guano, and so forth; nor of the value to a maritime country of so excellent a nursery and training for seamen. It remains, however, to indicate what may yet be done to preserve to mankind this great source of wealth, and incidentally to remove causes of international dispute, which do create international friction and might aid to fan the flame of war.

The remedy to which I would call special attention is the somewhat novel one which I will call

INTERNATIONAL ADMINISTRATION.

There are many specific points on which control may be desirable. In the preservation of the fishery, methods of fishing, times of fishing, and limits of catch may be necessary. For the safety of the fishermen there is the important question of lights carried by them at night. Recently this question has been very fully gone into at the International Maritime Conference at Washington, on the success of which we all congratulate ourselves, especially as this was greatly due to two of our vice-presidents, Sir Charles Hall, the chief British representative, and to Dr. Sievking. The elaborate system of lights and night signals to distinguish drift nets, trawlers, &c., authorised by this Conference is of little value unless enforced. Other regulations, such as the enforcement of a common law and regulations of drink traffic, are also of the greatest advantage to those frequenting any common fishing ground.

The guiding principle to be followed is that the nations taking part in any sea fishery shall be encouraged to establish by mutual agreement regulations for the control of all frequenting the fishery, and the custom should be fostered that any nations subsequently sharing in these fisheries shall conform to the same regulations. The immediate course of action is by international conference to decide on the area and the regulations, the delegates binding their respective Governments by coincident and identical legislation to compel their own ships and citizens, entering the area under their flag, to conform to the regulations.

In the highly successful North Sea Fisheries Convention we have an interesting and encouraging example of what can be done in establishing, as it were, international legislation and administration over great areas of the coast for the preservation of common fishery rights.

We must remember that in more than one instance there has reappeared a tendency for nations to reassert over large areas of ocean the assumption of actual sovereignty, and where such an arrangement has the merit of simplicity it would be premature, before it came into general adoption, a general agreement among the Powers concerned a sort of partition of the ocean into

the Extent of Coast to
cles VI and VII of the
February 16 (28), 1825,
at Britain and Russia,
vely intended to apply.

are the first five Articles of the
Convention sent by Mr. G. Canning
Her Majesty's Ambassador at
17th July, 1824:—

ARTICLE I.

in the High Contracting Parties that
acts shall enjoy the right of free
whole extent of the Pacific Ocean,
within Behring's Straits, and shall
molested in carrying on their trade
of the said ocean, either to the
d thereof.

stated that the said right of fishery
by the subjects of either of the two
marine leagues from the respective
r.

ARTICLE II.

separates the possessions of the two
ties upon the continent and the

islands of America to the north-west shall be drawn in
the manner following:

"Commencing from the two points of the island called
'Prince of Wales' Island,' which form the southern
extremity thereof, which points lie in the parallel of
54° 40', and between the 131st and 133rd degree of west
longitude (meridian of Greenwich), the line of frontier
between the British and Russian possessions shall ascend
northerly along the channel called Portland Channel, till
it strikes the coast of the continent lying in the 56th
degree of north latitude. From this point it shall be
carried along that coast, in a direction parallel to its
windings, and at or within the seaward base of the
mountains by which it is bounded, as far as the 139th
degree of longitude west of the said meridian. Thence
the said meridian line of 139th degree of west longitude,
in its extension as far as the Frozen Ocean, shall form the
boundary of the British and Russian possessions on the
said continent of America to the north-west.

spheres of influence, somewhat after the fashion of the recent international partition of Africa—rights of transit or free navigation being preserved to vessels of all nations. In such case, however, very special regard would have to be given to any prescriptive or conventional right of user, including, above all, that of fishery, established by vessels or citizens of other nationalities.

It seems far more probable, however, that particular areas can best be controlled by what I have termed International Administration, that is, joint international agreement as to regulations and their enforcement over definite areas. By such a local application of the law of nations we can readily remove this great cause of causes of international difference and quarrel; by this means one great practical good be done in the interests of the peace and the prosperity of mankind.



2

in the Extent of Coast to
Articles VI and VII of the
February 16 (28), 1825,
Great Britain and Russia,
expressly intended to apply.

are the first five Articles of the
Convention sent by Mr. G. Canning
Her Majesty's Ambassador at
St. Petersburg, 18th July, 1824:—

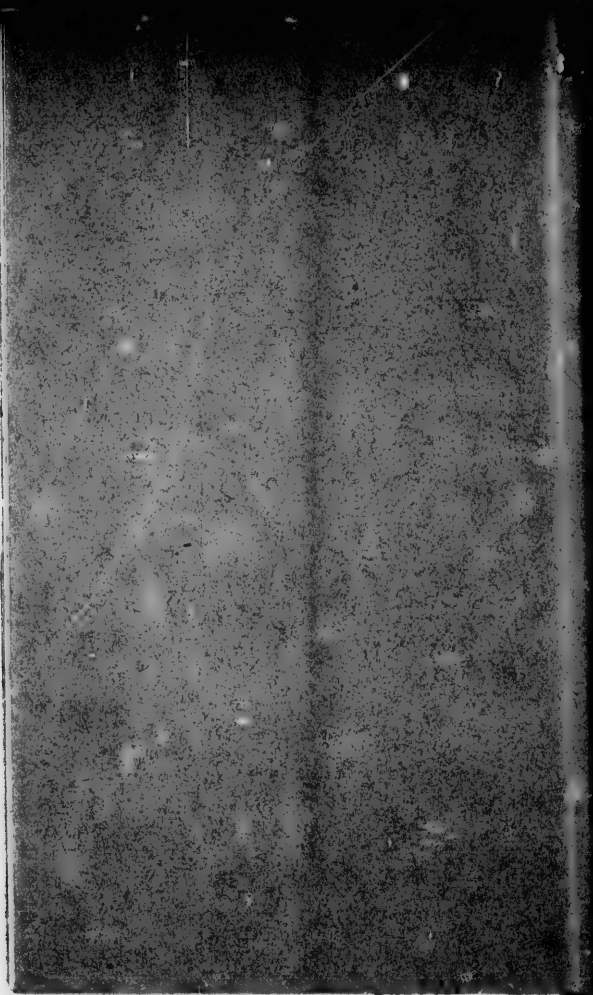
ARTICLE I.

On the High Contracting Parties that
they shall enjoy the right of free
navigation throughout the whole extent of the Pacific Ocean,
except within Behring's Straits, and shall
not be molested in carrying on their trade
throughout the said ocean, either to the
north or south thereof.
It is understood that the said right of fishery
shall be enjoyed by the subjects of either of the two
High Contracting Parties within the marine leagues from the respective
coasts.

ARTICLE II.

It is agreed that the line separating the possessions of the two
High Contracting Parties upon the continent and the
islands of America to the north-west shall be drawn in
the manner following:

"Commencing from the two points of the island called
'Prince of Wales' Island,' which form the southern
extremity thereof, which points lie in the parallel of
54° 40', and between the 131st and 133rd degree of west
longitude (meridian of Greenwich), the line of frontier
between the British and Russian possessions shall ascend
northerly along the channel called Portland Channel, till
it strikes the coast of the continent lying in the 56th
degree of north latitude. From this point it shall be
carried along that coast, in a direction parallel to its
windings, and at or within the seaward base of the
mountains by which it is bounded, as far as the 139th
degree of longitude west of the said meridian. Thence
the said meridian line of 139th degree of west longitude,
in its extension as far as the Frozen Ocean, shall form the
boundary of the British and Russian possessions on the
said continent of America to the north-west.



CONFIDENTIAL

Memorandum on the Extent of Coast to which Articles VI and VII of the Treaty of February 16 (28), 1825, between Great Britain and Russia, were respectively intended to apply.

THE following are the first five Articles of the "Projet" of Convention sent by Mr. G. Canning to Sir C. Bagot, Her Majesty's Ambassador at St. Petersburg, 12th July, 1824:—

"ARTICLE I.

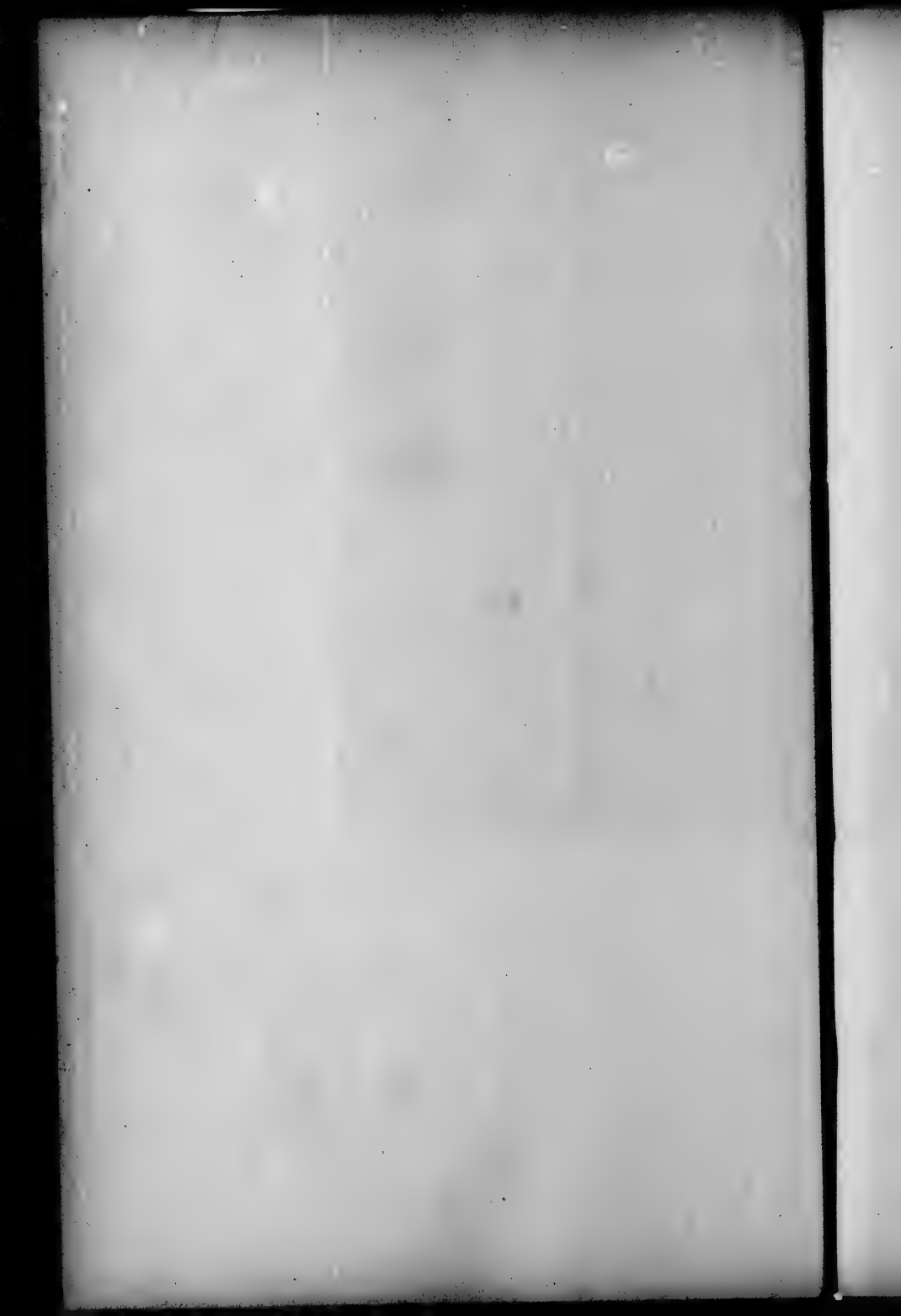
"It is agreed between the High Contracting Parties that their respective subjects shall enjoy the right of free navigation along the whole extent of the Pacific Ocean, comprehending the sea within Behring's Straits, and shall neither be troubled nor molested in carrying on their trade and fisheries, in all parts of the said ocean, either to the northward or southward thereof.

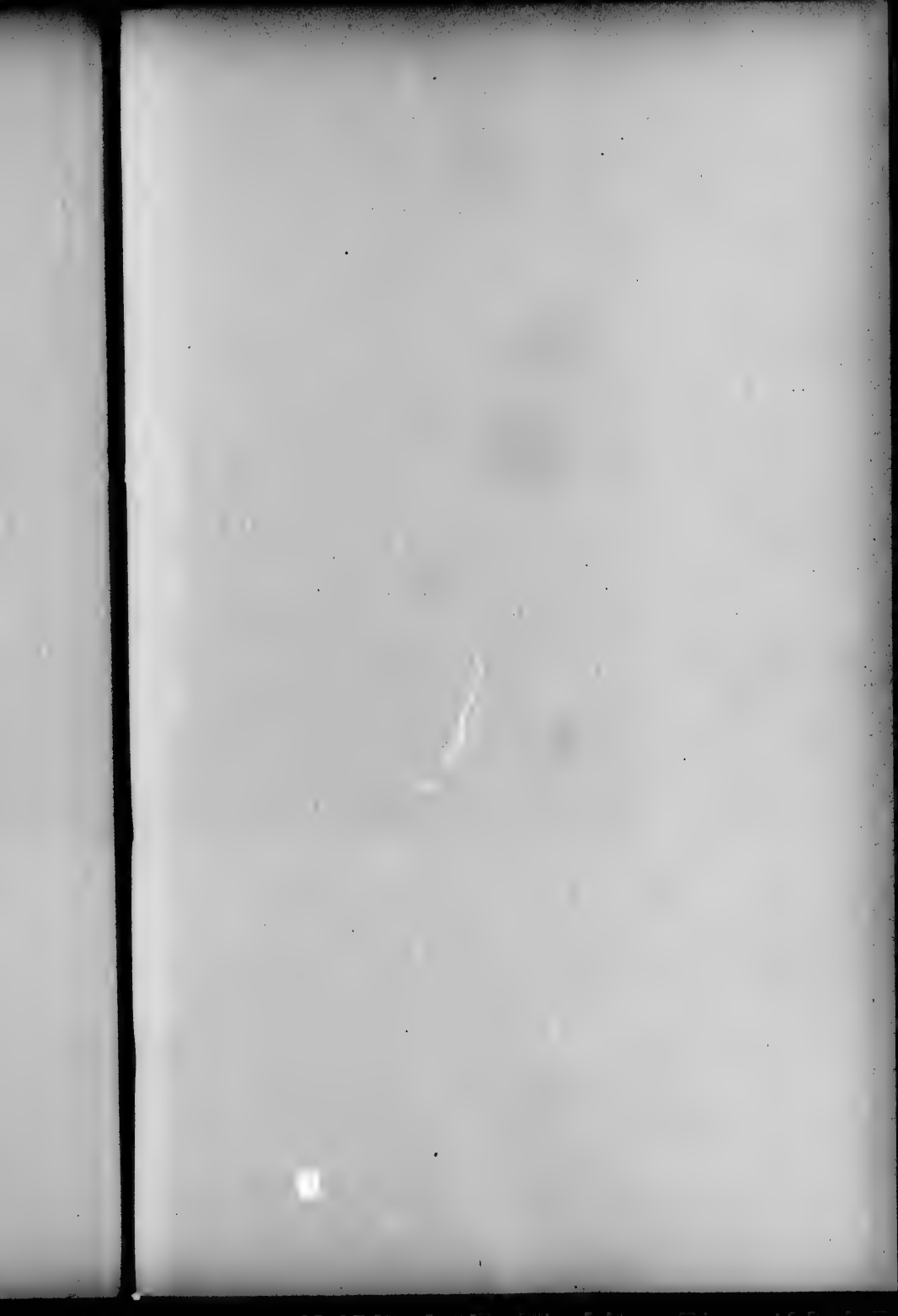
"It being well understood that the said right of fishery shall not be exercised by the subjects of either of the two Powers nearer than 2 marine leagues from the respective possessions of the other.

"ARTICLE II.

"The line which separates the possessions of the two High Contracting Parties upon the continent and the islands of America to the north-west shall be drawn in the manner following.

"Commencing from the two points of the island called 'Prince of Wales' Island,' which form the southern extremity thereof, which points lie in the parallel of 54° 40', and between the 131st and 133rd degree of west longitude (meridian of Greenwich), the line of frontier between the British and Russian possessions shall ascend northerly along the channel called Portland Channel, till it strikes the coast of the continent lying in the 56th degree of north latitude. From this point it shall be carried along that coast, in a direction parallel to its windings, and at or within the seaward base of the mountains by which it is bounded, as far as the 139th degree of longitude west of the said meridian. Thence the said meridian line of 139th degree of west longitude, in its extension as far as the Frozen Ocean, shall form the boundary of the British and Russian possessions on the said continent of America to the north-west.





2

"ARTICLE III.

"It is, nevertheless, understood, with regard to the stipulations of the preceding Article:

"1. That the said line of coast on the continent of America, which forms the boundary of the Russian possessions, shall not, in any case, extend more than marine leagues in breadth from the sea towards the interior, at whatever distance the aforesaid mountains may be.

"2. That British subjects shall for ever freely navigate and trade along the said line of coast, and along the neighbouring islands.

"3. That the navigation and commerce of those rivers of the continent which cross this line of coast shall be open to British subjects, as well as to those inhabiting or visiting the interior of this continent, as to those coming from the Pacific Ocean who shall touch at these latitudes.

"ARTICLE IV.

"The port of Sitka, or Novo-Archangelsk, shall be, and shall for ever remain, open to the commerce of the subjects of His Britannic Majesty.

"ARTICLE V.

"With regard to the other parts of the north-west coast of America and of the islands adjacent thereto belonging to either of the two High Contracting Parties, it is agreed that for the space of years from the April, 1824, their respective vessels, and those of their subjects, shall reciprocally enjoy the liberty of visiting, without hindrance, the gulfs, havens, and creeks of the said coast, in places not already occupied, for the purposes of fishery and of commerce with the natives of the country.

"It being understood:

"1. That the subjects of either of the High Contracting Parties shall not land at any spot where there may be an establishment of the other, without the permission of the Governor or other authority of the place, unless they should be driven thither by stress of weather or other accidents.

"2. That the said liberty of commerce shall not include the trade in spirituous liquors, in fire-arms, swords, bayonets, &c., gunpowder, or other warlike stores. The High Contracting Parties reciprocally engaging not to permit the above-mentioned articles to be sold or transferred, in any manner whatever, to the natives of the country."

The meaning of these stipulations is clear.

The perpetual right of navigation in territorial waters and rivers was to apply only to the strip of coast between latitude 54° 40', and another point which may be taken roughly as in latitude 59° 30'.

The reciprocal permission to visit territorial

waters in places not already occupied for a term of years was to apply to all other parts of the north-west coast of America and the islands adjacent thereto belonging to either of the High Contracting Parties.

The Russians, however, objected to these provisions, as will be seen from the following extract from a despatch of Sir C. Bagot, dated the 12th August, 1824:—

"The differences between this 'Contre-Projet' and the 'Projet' which I had given in are, in many respects, unimportant, consisting either in unnecessary changes in the expressions, or in the order of the Articles, or in other minor points, none of which, as I have reason to think, would have been tenaciously adhered to, and of which some might have been safely admitted. But there are three points upon which the differences appear to be almost, if not altogether, irreconcilable.

"These points are:

"1. As to the opening *for ever* to the commerce of British subjects of the port of Novo-Archangelsk.

"2. As to the liberty to be granted to British subjects to navigate and trade *for ever* along the coast of the *lisière* which it is proposed to cede to Russia, from the Portland Channel to the 60th degree of north latitude, and the islands adjacent.

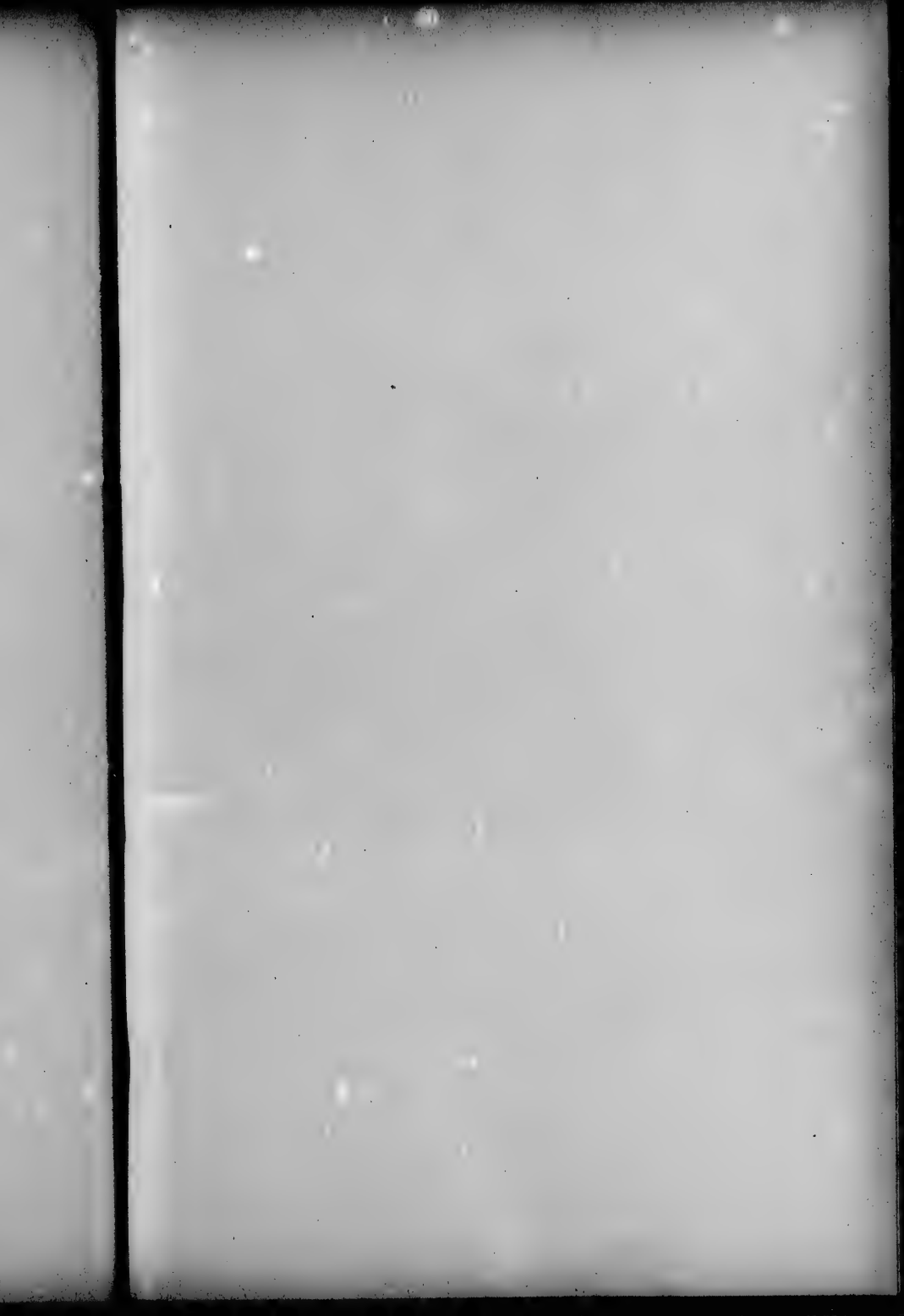
"3. As to the liberty to be given reciprocally to each Power to visit, for a term of years, the other parts of the north-west coasts of America.

"As to the first of these points, the Russian Plenipotentiaries declare that, however disposed they might, and probably should be, to renew this liberty to His Majesty's subjects at the expiration of ten years, they can, under no circumstances, consent to divest themselves for ever of a discretionary power in this respect, by granting such a privilege in perpetuity.

"Upon this point I reminded the Plenipotentiaries that the freedom of the port of Novo-Archangelsk was originally offered to Great Britain by themselves, unsolicited and unsuggested by me, in the first 'Contre-Projet' which they gave to me in our former conferences; that the same offer had been repeated by Count Nesselrode in his despatch to Count Lieven of the 5th April last, and that upon neither occasion had it been accompanied by any restriction as to any period of time. It is admitted to me that no period of time was specified upon those occasions, but that it was never intended to declare that the freedom should be perpetual, and that they could never be induced to grant it upon such terms.

"As to the second point: The Russian Plenipotentiaries declare that they are ready to grant to His Majesty's subjects for ten years, but for no longer period, the liberty to navigate and trade along the coast of the *lisière* proposed to be ceded to Russia, from the Portland Channel to the 60th degree of north latitude, and the islands





adjacent; and that they are ready to grant *for ever* the right of ingress and egress into and from whatever rivers may flow from the American continent and fall into the Pacific Ocean within the above-described *lisière*, but that they can, under no circumstances, and by no supposed correspondent advantages, be induced to grant to any Power the privilege to navigate and trade in perpetuity within a country the full sovereignty of which was to belong to Russia; that such perpetual concession was repugnant to all national feeling, and was inconsistent with the very idea of sovereignty.

"As regards the third point, the Russian Plenipotentiaries declared that the coasts of North America extending from the 60th degree of north latitude to Behring Straits, the liberty to visit which, under certain conditions, is stipulated in the 'Projet' by Great Britain, in return for a similar liberty to be given, under the same conditions, to Russian subjects to visit the North American coasts belonging to His Majesty, are, and have always been, the absolute and undisputed territory of His Imperial Majesty, and that it is not the intention of His Imperial Majesty to grant to any Power whatever for any period of time the liberty which is required.

"These are the three principal points upon which I was yesterday distinctly given to understand that the Russian Government would consider it their duty to insist, and, consequently, that, unless my instructions should enable me to modify the 'Projet' so far as regarded them, the negotiations must be considered as at an end."

Sir C. Bagot at the same time forwarded a "Contre-Projet," offered by the Russian Plenipotentiaries, of which the seven first Articles were as follows:—

"ARTICLE I.

"La ligne de démarcation entre les possessions des deux Hautes Parties Contractantes sur la côte nord-ouest de l'Amérique et les îles adjacentes, sera tracée ainsi qu'il suit:

"A partir des deux points qui forment l'extrémité méridionale de l'île dite du Prince de Galles, laquelle appartiendra tout entière à la Russie, points situés sous le parallèle du 54° 40' de latitude nord, et entre les 131° et 133° de longitude ouest (méridien de Greenwich) la ligne de la frontière entre les possessions Russes et les possessions Britanniques remontera au nord par la passe, dite le Portland Channel, jusqu'au point où cette passe se termine dans l'intérieur de la terre ferme au 56° de latitude nord. De ce point, elle suivra cette côte parallèlement à ses sinuosités jusqu'au 139° de longitude ouest (même méridien) et de là, la frontière entre les possessions respectives sur le continent Américain sera formée par la ligne du *susdit* degré de longitude dans sa prolongation jusqu'à la Mer Glaciale.

"ARTICLE II.

"La lisière de la côte nord-ouest appartenante à la Russie depuis le Portland Channel jusqu'au point d'intersection du 139° de longitude ouest (méridien de Greenwich) n'aura point en largeur sur le continent plus de 10 lieues marines à partir du bord de la mer.

"ARTICLE III.

"Il est convenu—

"1. Que dans les possessions des deux Puissances, telles qu'elles sont désignées aux Articles précédens et nommément jusqu'à la hauteur du 59° 30' de latitude nord, mais point au delà, leurs vaisseaux respectifs, et ceux de leurs sujets auront pendant dix ans à compter du 5 (17) Avril, 1824, la faculté réciproque de fréquenter librement les golpes, havres, criques, dans les parties des îles et des côtes, qui ne seraient point occupées par des Établissements soit Russes, soit Britanniques, et d'y faire la pêche et le commerce avec les naturels du pays.

"2. Que partout où il y aura un Établissement de l'une des Hautes Puissances Contractantes, les sujets de l'autre ne pourront y aborder sans la permission du Commandant ou proposé du lieu, sauf les cas d'accidens ou de tempête.

"3. Que la liberté de commerce ci-dessus mentionnée ne comprendra ni les liqueurs spiritueuses, ni les armes à feu et armes blanches, ni la poudre à canon et autres munitions de guerre: tous articles que les Hautes Puissances Contractantes s'engagent réciproquement à ne pas laisser vendre par leurs sujets respectifs aux naturels de la côte et des îles nord-ouest de l'Amérique.

"4. Que sur la lisière de la dite côte indiquée en l'Article II de la présente Convention comme appartenante à la Russie les sujets de Sa Majesté Britannique jouiront à perpétuité de la libre navigation des fleuves, soit qu'ils habitent l'intérieur du continent, soit qu'ils veulent y arriver de l'Océan Pacifique au moyen de ces mêmes fleuves.

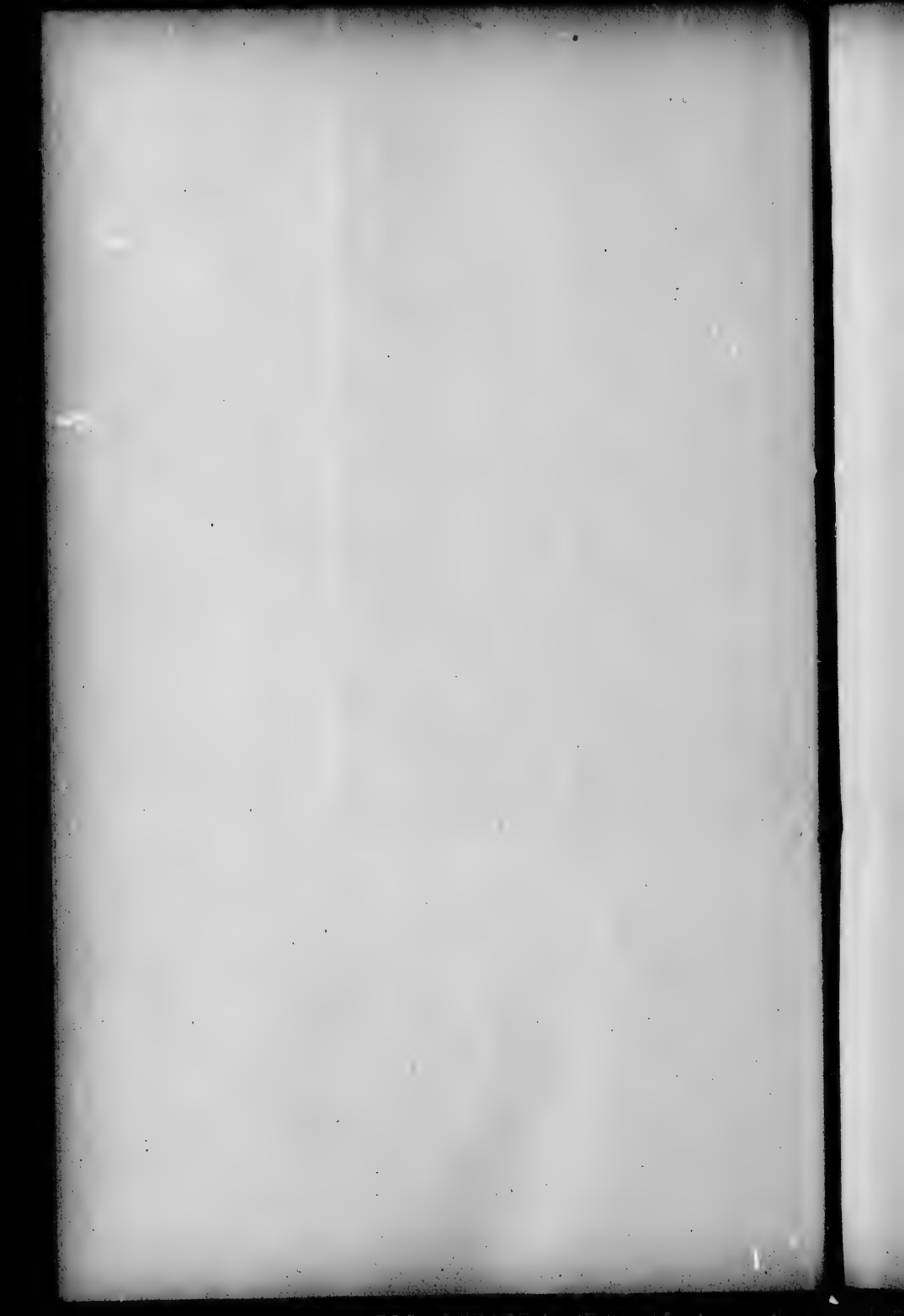
"5. Que le port de Sitka ou Novo-Archangelak sera ouvert, pendant dix ans, au commerce étranger, et qu'à l'expiration de ce terme cette franchise sera renouvelée suivant les convenances de la Russie.

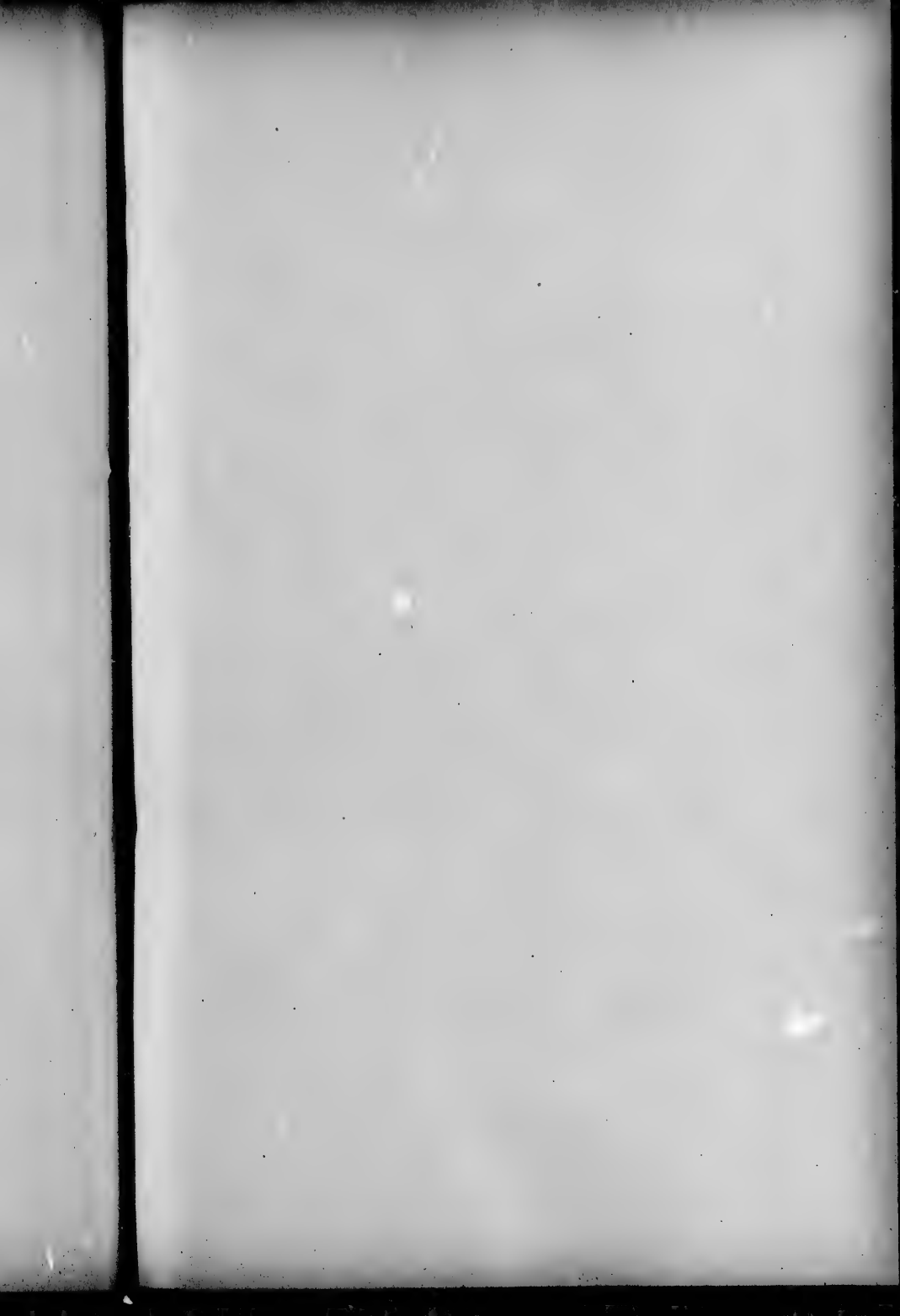
"ARTICLE IV.

"A l'avenir il ne pourra être formé aucun Établissement par les sujets de Sa Majesté Britannique dans les limites des possessions Russes désignées aux Articles I et II et de même il n'en pourra être formé aucun par les sujets de Sa Majesté l'Empereur de Toutes les Russies hors des dites limites.

"ARTICLE V.

"Les Hautes Puissances Contractantes stipulent en outre que leurs sujets respectifs navigueront librement, sur toute l'étendue de l'Océan Pacifique, tant au nord qu'au sud, sans entrave quelconque, et qu'ils jouiront du droit de





pêche en haute mer, mais que ce droit ne pourra jamais être exercé qu'à la distance de 2 lieues marines des côtes ou possessions, soit Russes, soit Britanniques.

"ARTICLE VI.

"Sa Majesté l'Empereur de Toutes les Russies, voulant même donner une preuve particulière de ses égards pour les intérêts des sujets de Sa Majesté Britannique et rendre plus utile le succès des entreprises, qui auraient pour résultat de découvrir un passage au nord du continent Américain, consent à ce que la liberté de navigation mentionnée en l'Article précédent s'étende sous les mêmes conditions, au Détroit de Behring et à la mer située au nord de ce détroit.

"ARTICLE VII.

"Les vaisseaux Russes et Britanniques naviguant sur l'Océan Pacifique et la mer ci-dessus indiquée, qui seroient forcés par les tempêtes ou par quelque avarie, de se réfugier dans les ports respectifs des Hautes Parties Contractantes, pourront s'y radoubier, s'y pourvoir de tous les objets qui leur seront nécessaires et se remettre en mer librement, sans payer d'autres droits que ceux de port et de fanaux, lesquels seront fixés pour eux du même montant que pour les navires nationaux.

"En pareilles occasions les patrons des bâtimens, soit Russes, soit Britanniques, seront tenus de se conformer aux Lois, Ordonnances, et Tarifs en vigueur dans le port où ils auront abordé."

This "Contre-Projet" it will be seen gave the right of navigating the rivers in perpetuity on the strip of coast between 54° 40' and 54° 30', but gave the right of visiting the territorial waters for ten years only as far north as 59° 30'.

At this point the negotiations were broken off, and were not resumed till the end of 1824, when Mr. Stratford Canning was sent to St. Petersburg as British Plenipotentiary for concluding the Convention.

Mr. George Canning, in his despatch of instructions to Mr. S. Canning, dated the 8th December, 1824, wrote as follows :

"Perhaps the simplest course after all will be to substitute, for all that part of the 'Projet' and 'Contre-Projet' which relates to maritime rights and to navigation, the first two Articles of the Convention already concluded by the Court of St. Petersburg with the United States of America, in the order in which they stand in that Convention.

"Russia cannot mean to give to the United States of America what she withholds from us; nor to withhold from us anything that she has consented to give to the United States.

"The uniformity of stipulations *in pari materia* gives clearness and force to both arrangements, and will establish that footing of equality between the several Contracting Parties which it is most desirable should exist between three Powers whose interests come so nearly in contact with each other in a part of the globe in which no other Power is concerned.

"This, therefore, is what I am to instruct you to propose at once to the Russian Minister as cutting short an otherwise inconvenient discussion.

"This expedient will dispose of Article I of the 'Projet' and of Articles V and VI of the 'Contre-Projet.'

"The next Articles relate to the territorial demarcation, and upon them I have only to make the following observations:

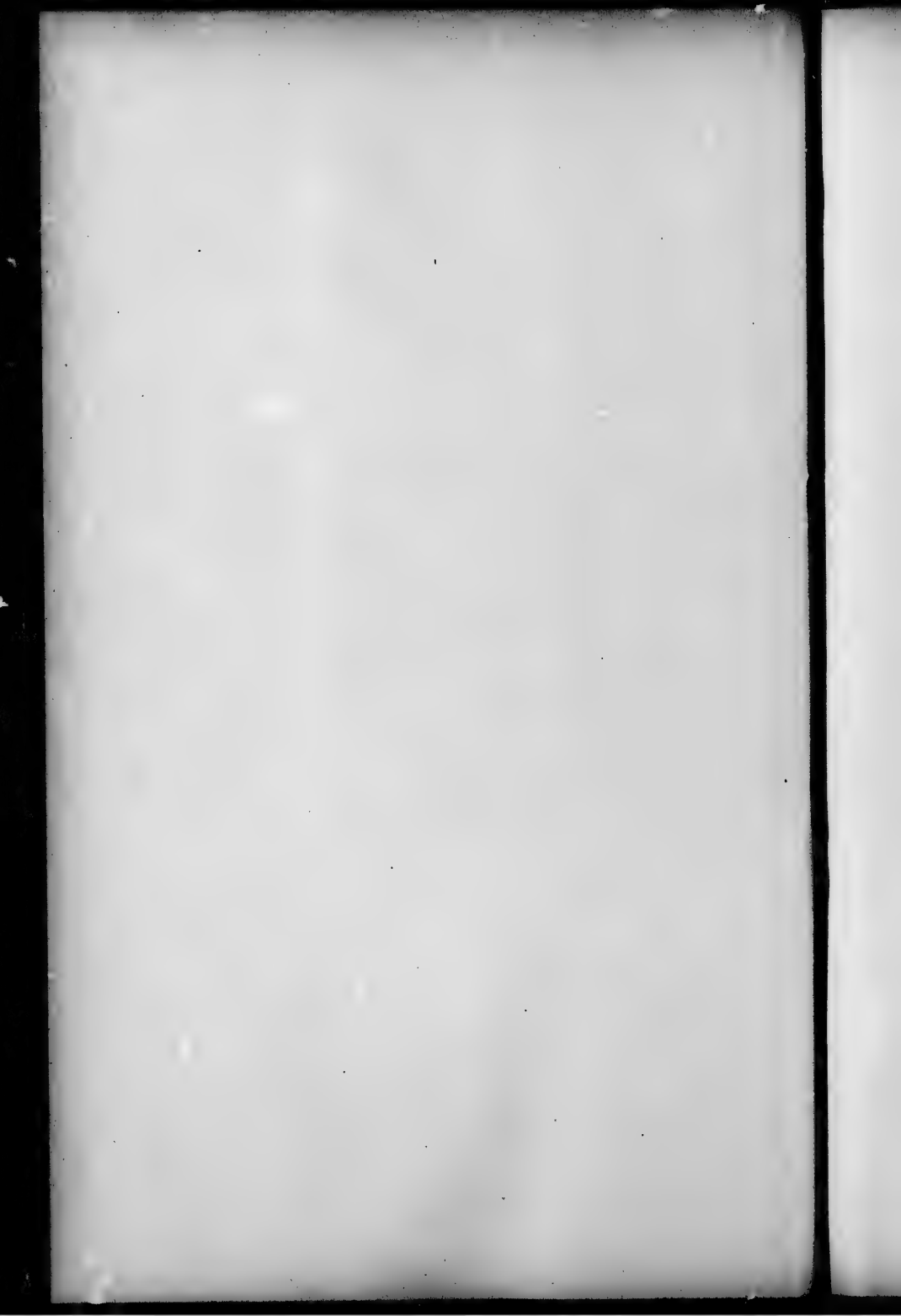
"The Russian Plenipotentiaries propose to withdraw entirely the limit of the *lisière* on the coast which they were themselves the first to propose, viz., the summit of the mountains which run parallel to the coast, and which appear, according to the Map, to follow all its sinuosities, and to substitute generally that which we only suggested as a corrective of their first proposition.

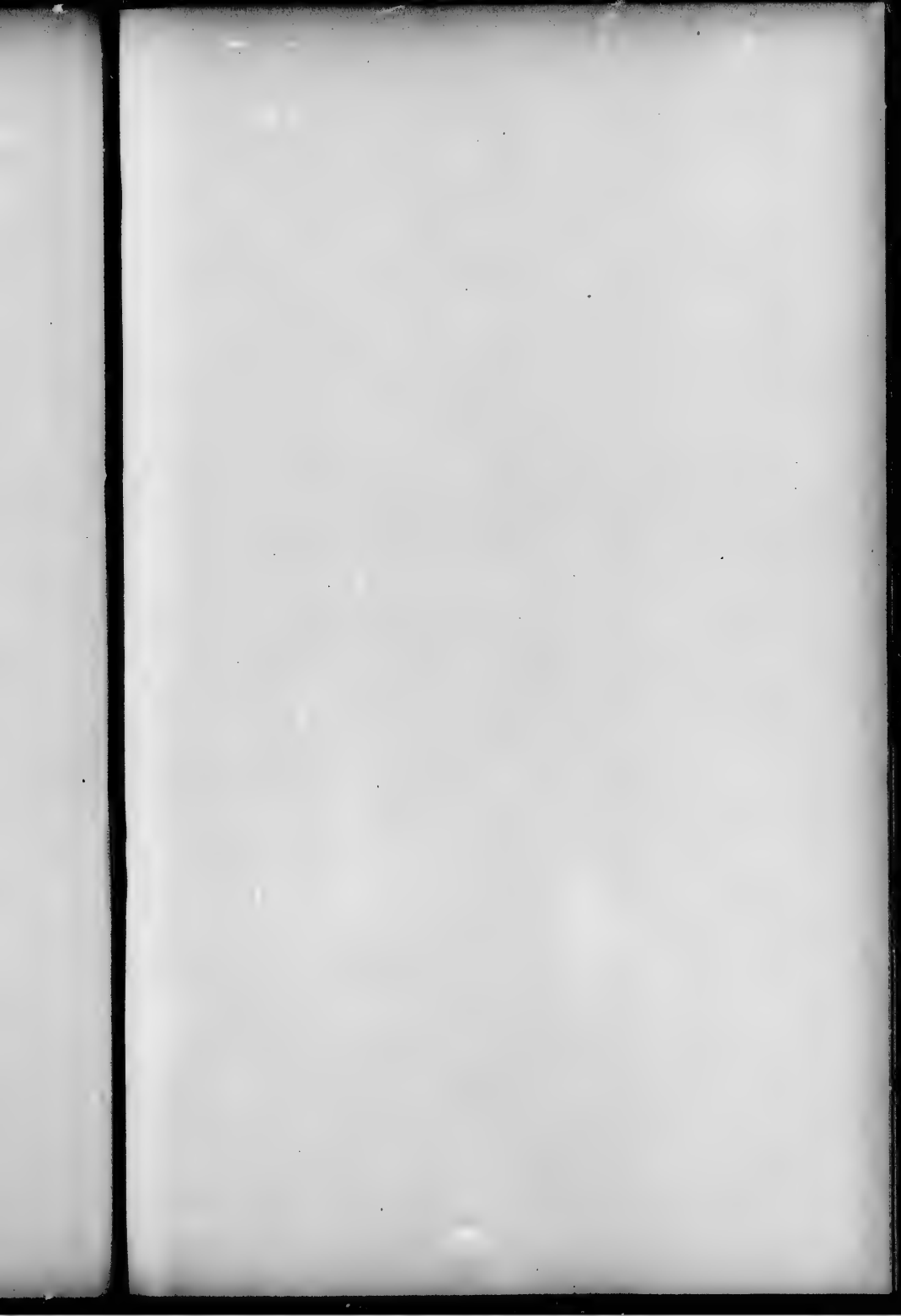
"We cannot agree to this change. It is quite obvious that the boundary of mountains, where they exist, is the most natural and effectual boundary. The inconvenience against which we wished to guard was that which you know and can thoroughly explain to the Russian Plenipotentiaries to have existed on the other side of the American continent, when mountains laid down in a Map as in a certain given position, and assumed in faith of the accuracy of that Map as a boundary between the possessions of England and the United States turned out to be quite differently situated, a discovery which has given rise to the most perplexing discussions. Should the Maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory, where we only intended to give, and they only intended to ask, a strip of sea-coast.

"To avoid the chance of this inconvenience we proposed to qualify the general proposition, 'that the mountains should be the boundary, with the condition if these mountains should not be found to extend beyond 10 leagues from the coast.' The Russian Plenipotentiaries now propose to take the distance invariably as the rule. But we cannot consent to this change. The mountains, as I have said, are a more eligible boundary than any imaginary line of demarcation, and this being their own original proposition, the Russian Plenipotentiaries cannot reasonably refuse to adhere to it.

"Where the mountains are the boundary, we are content to take the *summit* instead of the 'seaward base' as the line of demarcation.

"I omitted in my last instructions to Sir Charles Bagot, though I had signified to Count Lieven that I intended to require a small extension of the line of demarcation from the point where the *lisière* on the coast terminates in lati-





tude 59° to the northward. The extension required is from 139° to 141° west longitude, the latter being the parallel which falls more directly on Mount Elias.

"With regard to the port of Sitka, or New Archangel, the offer came originally from Russia, but we are not disposed to object to the restriction which she now applies to it.

"We are content that the port shall be open to us for ten years, provided only that if any other nation obtains a more extended term, the like term shall be extended to us also.

"We are content also to assign the period of ten years for the reciprocal liberty of access and commerce with each other's territories, which stipulation may be best stated precisely in the terms of Article IV of the American Convention."

The following are the first four Articles of the Treaty between Russia and the United States of the 5th (17th) April, 1824. The 1st, IInd, and IVth Articles are those which Mr. George Canning proposed to embody in the British Convention:—

"ARTICLE I.

"It is agreed that in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the High Contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following Articles:

"ARTICLE II.

"With the view of preventing the rights of navigation and of fishing, exercised upon the Great Ocean by the citizens and subjects of the High Contracting Powers, from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian establishment, without the permission of the Governor or Commander; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the north-west coast.

"ARTICLE III.

"It is, moreover, agreed that hereafter there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment upon the north-west coast of America, nor in any of the islands adjacent, to the north of 54° 40' of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

"ARTICLE IV.

"It is, nevertheless, understood that, during a term of ten years, counting from the signature of the present Convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbours, and creeks upon the coast mentioned in the preceding Article, for the purpose of fishing and trading with the natives of the country."

The negotiation proceeded on this basis, and in the Treaty concluded between Great Britain and Russia on the 16th February, 1825, the first seven Articles are as follows :—

"ARTICLE I.

"It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same or fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives; under the restrictions and conditions specified in the following Articles.

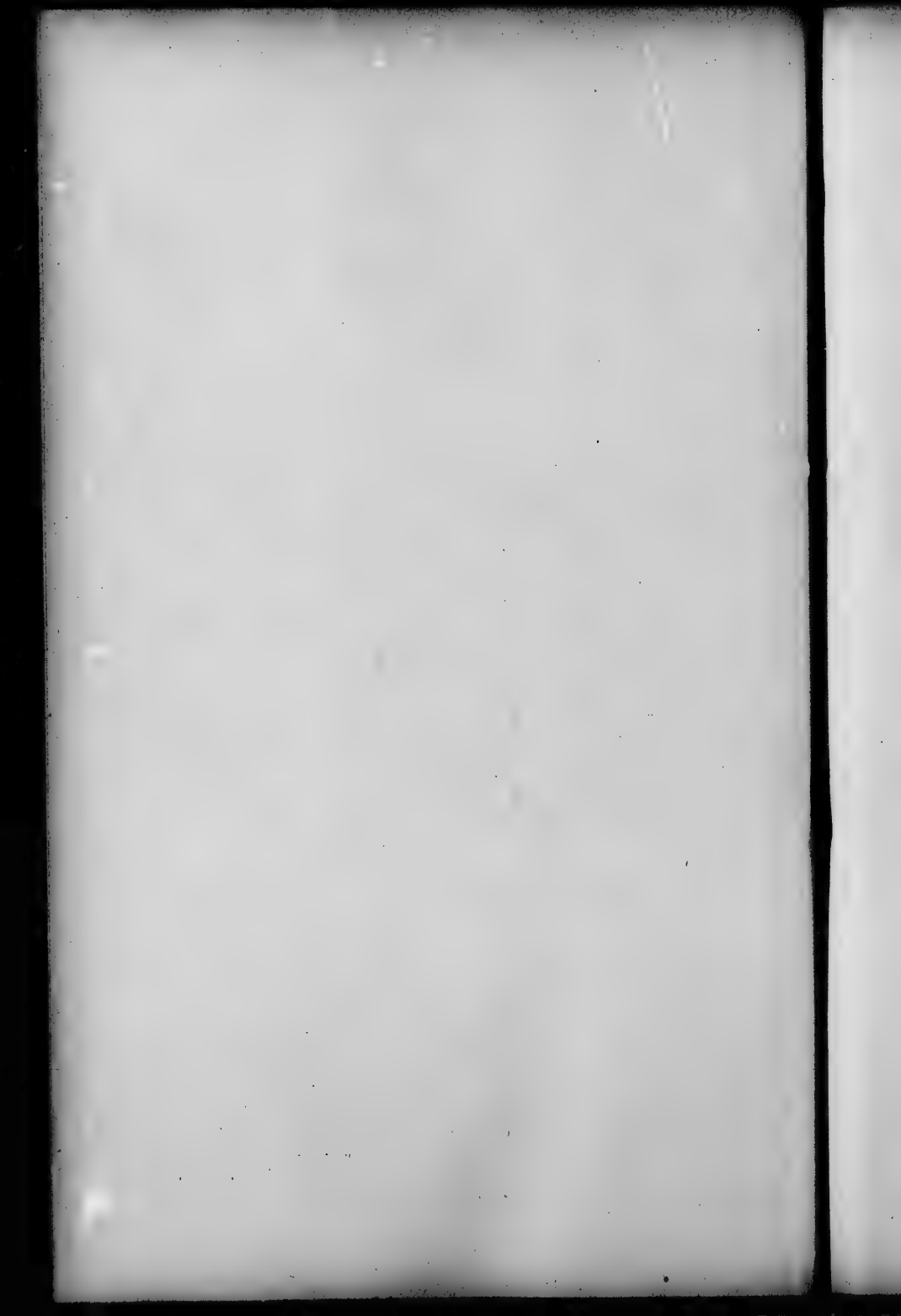
"ARTICLE II.

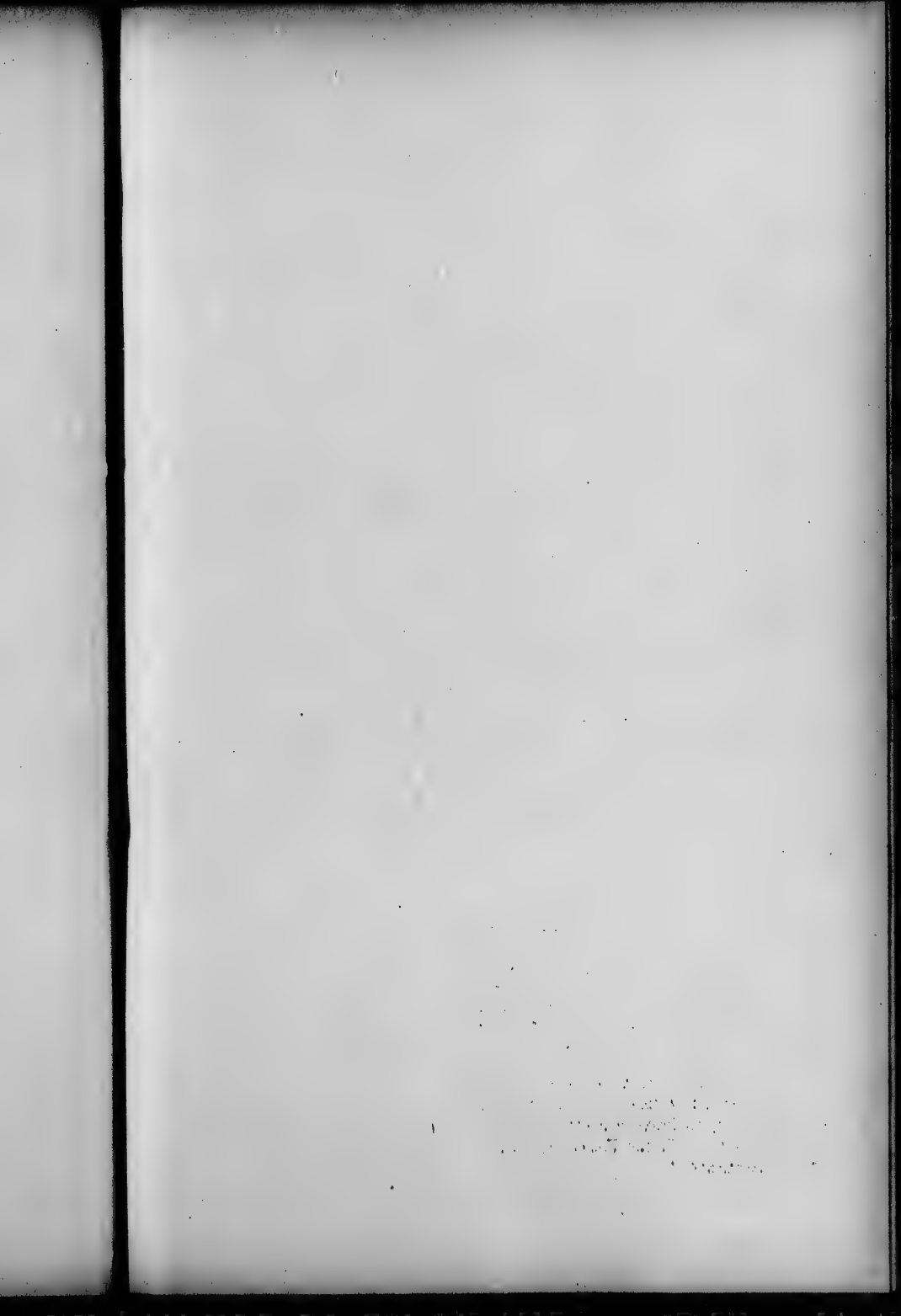
"In order to prevent the right of navigating and fishing exercised upon the ocean by the subjects of the High Contracting Parties from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment without the permission of the Governor or Commandant; and, on the other hand, that Russian subjects shall not land without permission at any British establishment on the north-west coast.

"ARTICLE III.

"The line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent and the islands of America to the north-west shall be drawn in the manner following:

"Commencing from the southernmost part of the island called Prince of Wales' Island, which point lies in the parallel of 54° 40' north latitude, and between the 131st and the 133rd degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection, and the said meridian-line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit





between the Russian and British possessions on the continent of America to the north-west.

"ARTICLE IV.

"With reference to the line of demarcation laid down in the preceding Article, it is understood :

"1st. That the island called Prince of Wales' Island shall belong wholly to Russia.

"2nd. That wherever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.

"ARTICLE V.

"It is, moreover, agreed that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding Articles to the possessions of the other; consequently British subjects shall not form any establishment either upon the coast or upon the border of the continent comprised within the limits of the Russian possessions, as designated in the two preceding Articles; and, in like manner, no establishment shall be formed by Russian subjects beyond the said limits.

"ARTICLE VI.

"It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of the present Convention.

"ARTICLE VII.

"It is also understood that, for the space of ten years from the signature of the present Convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III, for the purposes of fishing and of trading with the natives."

It is to be remarked that the words "line of coast," mentioned in Article VI, are rendered in the French text, "*la lisière de la côte indiquée,*" whereas in Article VII the French version has "*la côte mentionnée.*"

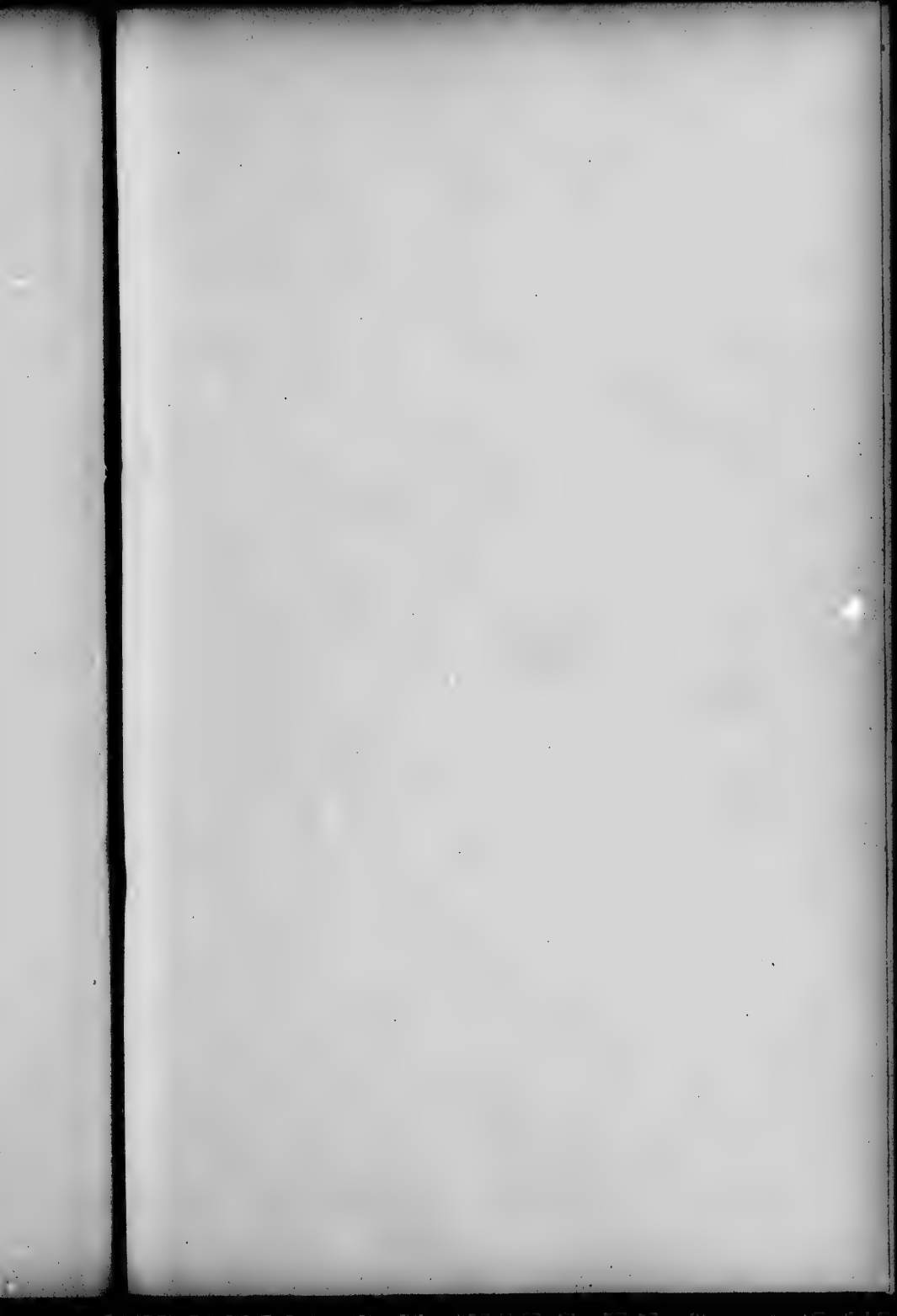
The wording of Article VII was in fact taken textually from the Treaty between Russia and the United States of the 5th April, 1824, with the exception of the substitution of the words "mentioned in Article III," for "mentioned in the preceding Article."

Article III of the United States' Treaty, however, differed from that of the British Treaty in that it mentioned only "the north-west coast of America and the islands adjacent to the north of 54° 40' of north latitude;" whereas the British Treaty, after speaking of the "coast of the continent and the islands of America to the north-west," goes on to describe a line of demarcation a portion of which is to "follow the summit of the mountains parallel to the coast."

The obvious conclusion, however, from the history of the negotiations is that the permanent privileges given in Article VI were meant only to apply to the restricted strip of coast thus particularly described, and that the temporary and reciprocal privileges secured by Article VII were to apply to the whole coast of the possessions of each Power.

Mr. Blaine, however, in his note to Sir J. Pouncefote of the 30th June, 1890, after stating that Article IV of the United States' Treaty relates solely to the "north-west coast of America," so well understood as the coast of the Pacific Ocean between the 50th and 60th degrees of north latitude, and therefore does not in the remotest degree touch Behring Sea or the land bordering upon it, goes on to analyze the provisions of the British Treaty. He says:—

"After the analysis of the Articles in the American Treaty there is little in the English Treaty that requires explanation. The two Treaties were drafted under circumstances and fitted to conditions quite similar. There were some differences because of Great Britain's ownership of British America. But these very differences corroborate the position of the United States. This is most plainly seen in Article VI. By that Article the subjects of Her Britannic Majesty were guaranteed the right of navigating freely the rivers emptying into the Pacific Ocean and crossing the line of demarcation upon the line of coast described in Article III. The line of demarcation is described in Article III as following "the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude." Article IV, qualifying Article III, specifies that "wherever the summit of the mountains which extend in a direction parallel to the coast, from the



56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at a distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and shall never exceed the distance of 10 marine leagues therefrom.

"By both these Articles the line of demarcation ceases to have any parallel relation to the coast when it reaches the point of intersection of the 141st degree of west longitude. From that point the 141st degree of west longitude, as far as it extends continuously on land northward, is taken as the boundary between the territories of the two Powers. It is thus evident that British subjects were guaranteed the right of navigating only such rivers as crossed the line of demarcation *while it followed the line of coast*. They were limited, therefore, to the rivers that emptied into the Pacific Ocean between 54° 40' and 60° north latitude, the latter being the point on the coast opposite the point where the line of demarcation diverges, Mount St. Elias.

"By this Agreement Great Britain was excluded from all rivers emptying into the Behring Sea, including the Great Yukon and its affluent the Porcupine, which rise, and for a long distance flow, in British America. So complete was the exclusion from Behring Sea that Great Britain surrendered in this case a doctrine which she had aided in impressing upon the Congress of Vienna for European rivers. She did not demand access to the sea from a river whose source was in her territory. She consented, by signing the Treaty of 1825, to such total exclusion from the Behring Sea as to forego following her own river to its mouth in that sea.

"It shows a curious association of political events that in the Washington Treaty of 1871 the United States conceded to Great Britain the privilege of navigating the Yukon and its branch the Porcupine to the Behring Sea in exchange for certain privileges conceded to the United States on the St. Lawrence. The request of Great Britain for the privilege of navigating the Yukon and the Porcupine is a suggestive confession that it was withheld from her by Russia in the Treaty of 1825, withheld because the rivers flowed to the Behring Sea.

"The VIIIth Article is practically a repetition of the IVth Article in the Treaty between Russia and the United States, and the privilege of fishing and trading with the natives is limited to the coast mentioned in Article III, identically the same line of coast which they were at liberty to pass through to reach British America or to reach the coast from British America. They are excluded from going north of the prescribed point on the coast near Mount St. Elias, and are therefore kept out of Behring Sea.

"It is to be noted that the negotiators of this Treaty in defining the boundary between the Russian and British possessions cease to observe particularity exactly at the point on the coast where it is intersected by the 60th

parallel. From that point the boundary is designated by the almost indefinite prolongation northward of the 141st degree of longitude west. It is plain, therefore, that this Treaty, like the Russo-American Treaty, limited the 'north-west coast' to that part of the coast between the 50th and 60th parallels of north latitude, as fully set forth by Mr. Middleton in the Protocols preceding the Treaty between the United States and Russia. The negotiators never touched one foot of the boundary of the Behring Sea, whether on continent or island, and never even made a reference to it. Its nearest point in Bristol Bay was 1,000 miles distant from the field of negotiation between the Powers."

Lord Salisbury, in his despatch to Sir J. Pauncefote of the 2nd August, 1890, replied to this argument as follows:—

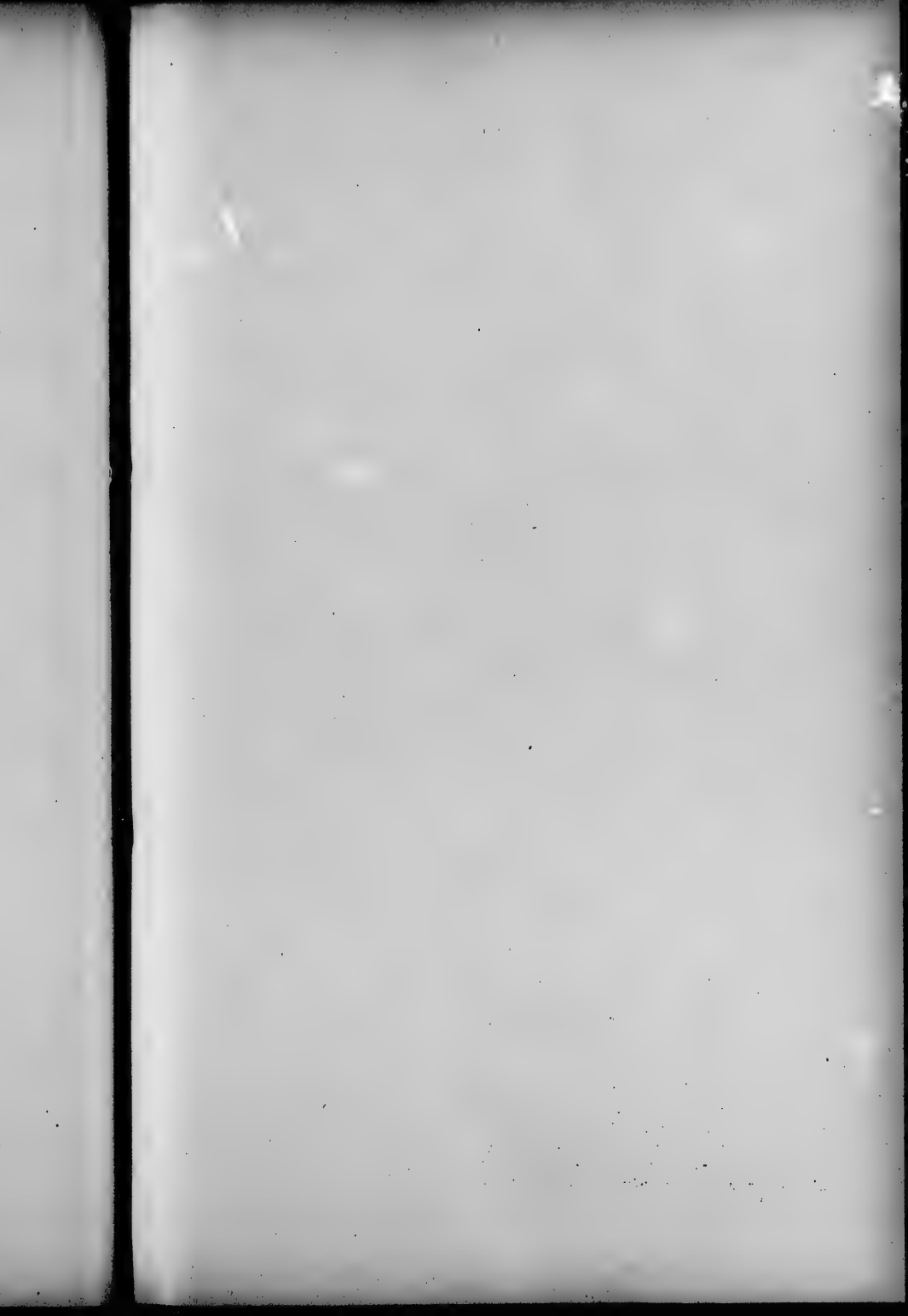
"With regard to the construction which Mr. Blaine puts upon the Treaty between the United States and Russia of the 17th April, 1824, I will only say that it is, as far as I am aware, an entirely novel one, that there is no trace of its having been known to the various publicists who have given an account of the controversy in treatises on international law, and that it is contrary, as I shall show, to that which the British negotiators placed on the Treaty when they adopted the 1st and 11th Articles for insertion in the British Treaty of the 28th February, 1825. I must further dissent from his interpretation of Article VII of the latter Treaty. That Article gives to the vessels of the two Powers 'liberty to frequent all the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III, for the purpose of fishing and of trading with the natives.' The expression 'coast mentioned in Article III' can only refer to the first words of the Article: 'The line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent and the islands of America to the north-west shall be drawn,' &c. That is to say, it included all the possessions of the two Powers on the north-west coast of America. For there would have been no sense whatever in stipulating that Russian vessels should have freedom of access to the small portion of coast which, by a later part of the Article, is to belong to Russia. And as bearing on this point it will be noticed that Article VI, which has a more restricted bearing, speaks only of 'the subjects of His Britannic Majesty,' and of 'the line of coast described in Article III.'"

Mr. Blaine's letter to Sir J. Pauncefote of the 17th December, 1890, contains the following rejoinder:—

"The VIth Article of Russia's Treaty with Great Britain is as follows:

"'It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether





from the ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course toward the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of the present Convention.'

"The meaning of this Article is not obscure. The subjects of Great Britain, whether arriving from the interior of the continent or from the ocean, shall enjoy the right of navigating freely all the rivers and streams which, in their course to the Pacific Ocean, *may cross the line of demarcation upon the line of coast described in Article III.* As is plainly apparent, the coast referred to in Article III is the coast south of the point of junction already described. Nothing is clearer than the reason for this provision. A *strip of land*, at no point wider than 10 marine leagues, running along the Pacific Ocean from 54° 40' to 60° (320 miles by geographical line, by the windings of the coast three times that distance), was assigned to Russia by the IIIrd Article. Directly to the east of this strip of land—or, as might be said, behind it—lay the British possessions. To shut out the inhabitants of the British possessions from the sea by this *strip of land* would have been not only unreasonable, but intolerable to Great Britain. Russia promptly conceded the privilege, and gave to Great Britain the right of navigating all rivers crossing that strip of land from 54° 40' to the point of intersection with the 141st degree of longitude. Without this concession the Treaty could not have been made. I do not understand that Lord Salisbury dissents from this obvious construction of the VIth Article, for in his despatch he says that the Article has a 'restricted bearing,' and refers only to 'the *line of coast described in Article III*' (the *italics* are his own), and the only line of coast described in Article III is the coast from 54° 40' to 60°. There is no description of the coast above that point stretching along the Behring Sea from latitude 60° to the Straits of Behring.

"The VIIth Article of the Anglo-Russian Treaty, whose provisions have led to the principal contention between the United States and Great Britain, is as follows:—

"It is also understood that for the space of ten years from the signature of the present Convention the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III, for the purposes of fishing and trading with the natives.'

"In the judgment of the President the meaning of this Article is altogether plain and clear. It provides that for the space of ten years the vessels of the two Powers should mutually be at liberty to frequent all the inland seas, &c., 'on the coast mentioned in Article III, for the purposes of fishing and trading with the natives.' Following out the

line of my argument and the language of the Article, I have already maintained that this privilege could only refer to the coast from $54^{\circ} 40'$ to the point of intersection with the 141^{st} degree of west longitude; that, therefore, British subjects were not granted the right of frequenting the Behring Sea.

"Denying this construction, Lord Salisbury says:—

"I must further dissent from Mr. Blaine's interpretation of Article VII of the latter Treaty (British). That Article gives to the vessels of the two Powers "liberty to frequent all the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III, for the purpose of fishing and of trading with the natives." The expression "coast mentioned in Article III" can only refer to the first words of the Article, "the line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent and the islands of America to the north-west shall be drawn," &c., that is to say, it included all the possessions of the two Powers on the north-west coast of America. For there would have been no sense whatever in stipulating that Russian vessels should have freedom of access to the small portion of coast which, by a later part of the Article, is to belong to Russia. And, as bearing on this point, it will be noticed that Article VI which has a more restricted bearing, speaks only of "the subjects of His Britannic Majesty," and of "the line of coast described in Article III."

"It is curious to note the embarrassing intricacies of his Lordship's language and the erroneous assumption upon which his argument is based. He admits that the privileges granted in the VIth Article to the subjects of Great Britain are limited to 'the coast described in Article III of the Treaty.' But when he reaches the VIIth Article, where the privileges granted are limited to 'the coast mentioned in Article III of the Treaty,' his Lordship maintains that the two references do not mean the same coast at all. The coast described in Article III and the coast mentioned in Article III are, therefore, in his Lordship's judgment, entirely different. The 'coast described in Article III' is limited, he admits, by the intersection of the boundary-line with the 141^{st} degree of longitude, but the 'coast mentioned in Article III' stretches to the Straits of Behring.

"The IIIrd Article is, indeed, a very plain one, and its meaning cannot be obscured. Observe that the 'line of demarcation' is between the possessions of both parties on the coast of the continent. Great Britain had no possessions on the coast-line above the point of junction with the 141^{st} degree, nor had she any Settlements above 60° north latitude. South of 60° north latitude was the only place where Great Britain had possessions on the coast-line. North of that point her territory had no connection whatever with the coast either of the Pacific Ocean or the Behring Sea. It is thus evident that the only coast referred to in Article III was this strip of land south of 60 or $59^{\circ} 30'$.



"The preamble closes by saying that the line of demarcation between the possessions on the coast 'shall be drawn in the manner following,' viz., from Prince of Wales' Island, in $54^{\circ} 40'$, along Portland Channel and the summit of the mountains parallel to the coast as far as their intersection with the 141st degree of longitude. After having described this line of demarcation between the possessions of both parties on the coast, the remaining sentence of the Article shows that, 'finally, from the said point of intersection, the said meridian-line . . . shall form the limit between the Russian and British possessions on the continent of America.' South of the point of intersection the Article designates a line of demarcation between possessions on the coast, north of that point of intersection the Article designates a meridian-line as the limit between possessions on the continent. The argument of Lord Salisbury appears to this Government not only to contradict the obvious meaning of the VIIth and IIIrd Articles, but to destroy their logical connection with the other Articles. In fact, Lord Salisbury's attempt to make two coasts out of the one coast referred to in the IIIrd Article is not only out of harmony with the plain provisions of the Anglo-Russian Treaty, but is inconsistent with the preceding part of his own argument."

The discussion was not pursued further, but Mr. Blaine in his last argument does not quote correctly the terms of the two Articles. The difference is not between the expressions "coast described" and "coast mentioned," but between "the line of coast described" ("la lisière de la côte indiquée") and "the coast mentioned" ("la côte mentionnée").

Now the word "lisière" in French means properly a strip on the outside, and is thoroughly applicable to the line of Russian coast between $54^{\circ} 40'$ and $59^{\circ} 30'$. As regards the navigation of any rivers crossing the boundary-line to the north of that point, it is to be observed that the line is situated at a distance of some 600 miles from the coast of Behring Sea, and that nothing was then known of the Yukon, the only river falling into that sea which has navigable waters in Canadian territory.

The Treaties with Russia of 1843 and 1859 both contain stipulations that "in regard to commerce and navigation in the Russian possessions on the north-west coast of America, the Convention concluded at St. Petersburg on the 16th (28th) February, 1825, continues in force."

Mr. Sumner, in his speech in favour of the Treaty of 1867 for the cession of Alaska to the United States, took the broad view of the interpretation to be placed on the Articles, and

it is only for the purpose of the present argument that Mr. Blaine has sought to restrict the concessions made to the United States and Great Britain.

The following is the material portion of Mr. Sumner's speech, which will be found in vol. i of the Appendix to the British Case, p. 51:—

"There are questions not unworthy of attention, which arise under the Treaty between Russia and Great Britain, fixing the eastern limits of these possessions, and conceding certain privileges to the latter Power. By this Treaty, signed at St. Petersburg on the 28th February, 1825, after fixing the boundaries between the Russian and British possessions, it provided that 'for the space of *ten years* the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, gulfs, havens, and creeks on the coast for the purpose of fishing and of trading with the natives;' and also that 'for the space of *ten years* the port of Sitka or Novo-Archangelsk shall be open to the commerce and vessels of British subjects.' — (Hertslet's "Commercial Treaties," vol. ii, p. 365.)

"In the same Treaty it is also provided that 'the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall *for ever* enjoy the right of navigating freely and without any hindrance whatever, all the rivers and streams which, in their course toward the Pacific Ocean, may cross the line of demarcation.'—(*Ibid.*)

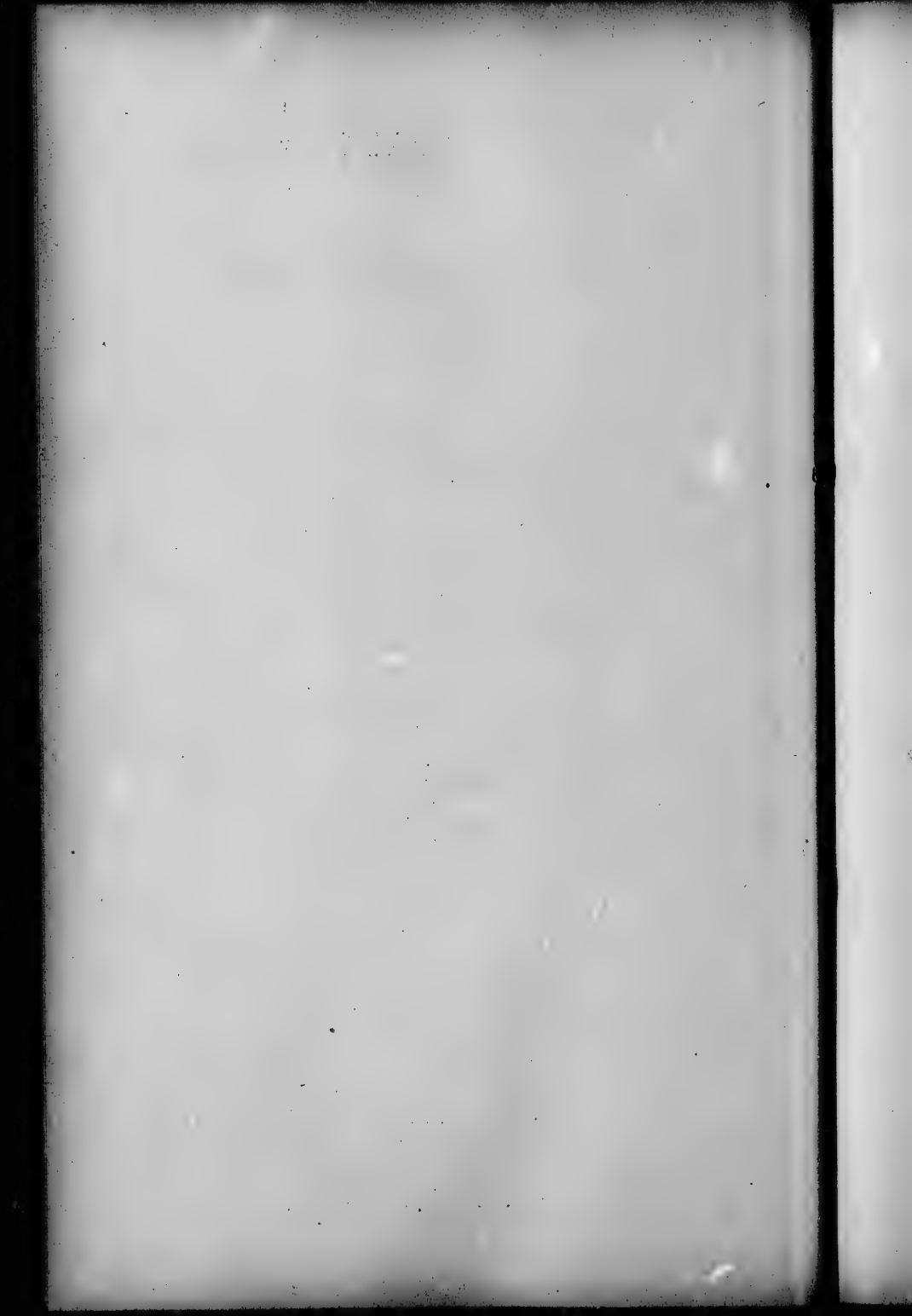
"Afterwards a Treaty of Commerce and Navigation between Russia and Great Britain was signed at St. Petersburg on the 11th January, 1843, subject to be terminated on notice from either party at the expiration of ten years, in which it is provided that 'in regard to commerce and navigation in the Russian possessions on the north-west coast of America the Convention of the 28th February, 1825, continues in force.'—(*Ibid.*, vol. vi, p. 767.)

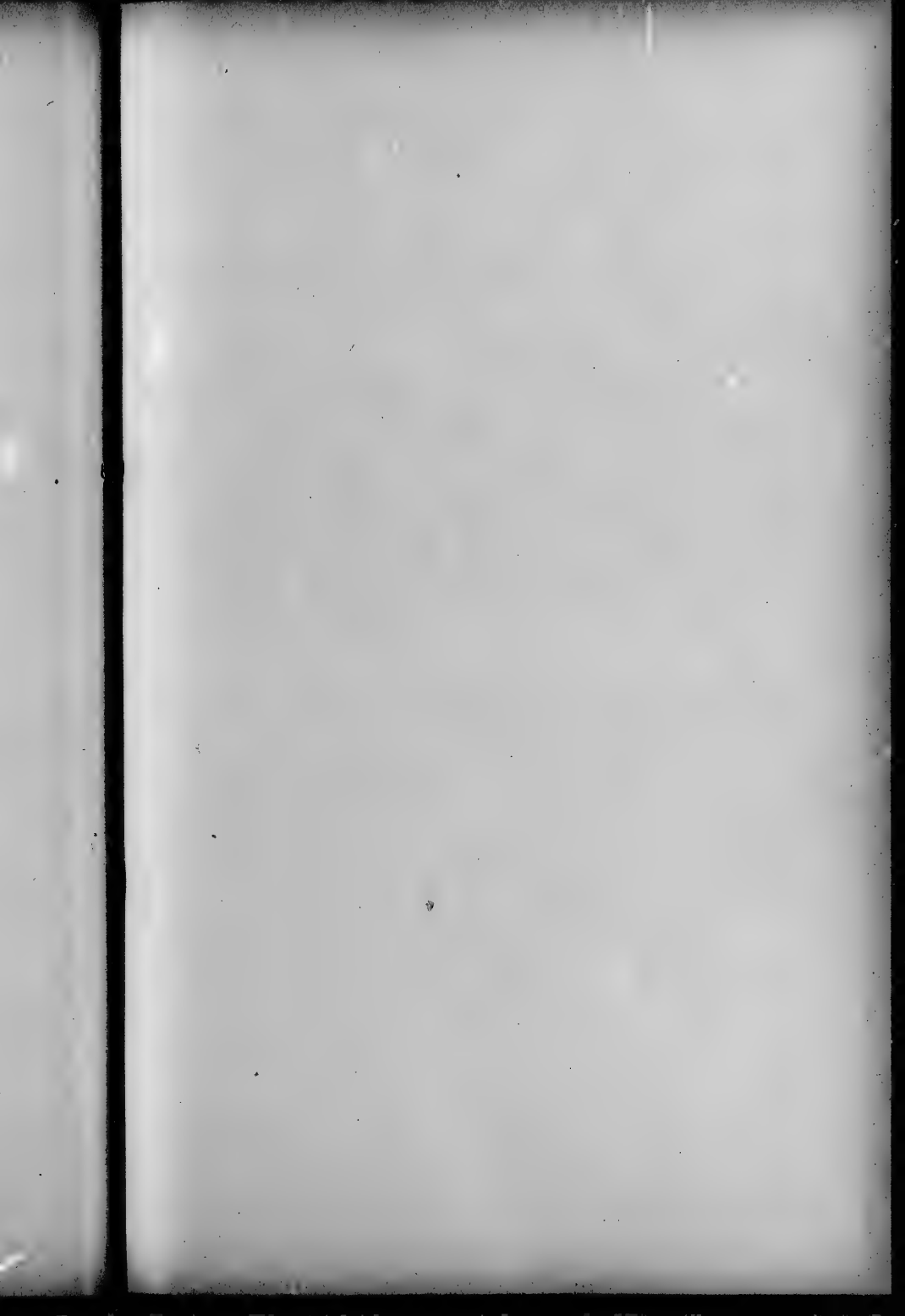
"Then ensued the Crimean war between Russia and Great Britain, effacing or suspending Treaties. Afterwards another Treaty of Commerce and Navigation was signed at St. Petersburg on the 12th January, 1859, subject to be terminated on notice from either party at the expiration of ten years, which repeats the last provision.—(*Ibid.*, vol. x, p. 1063.)

"Thus we have three different stipulations on the part of Russia: one opening seas, gulfs, and havens on the Russian coast to British subjects for fishing and trading with the natives; the second making Sitka a free port to British subjects; and the third making British rivers which flow through the Russian possessions for ever free to British navigation."

T. H. S.

Foreign Office,
November 24, 1892.





no 22

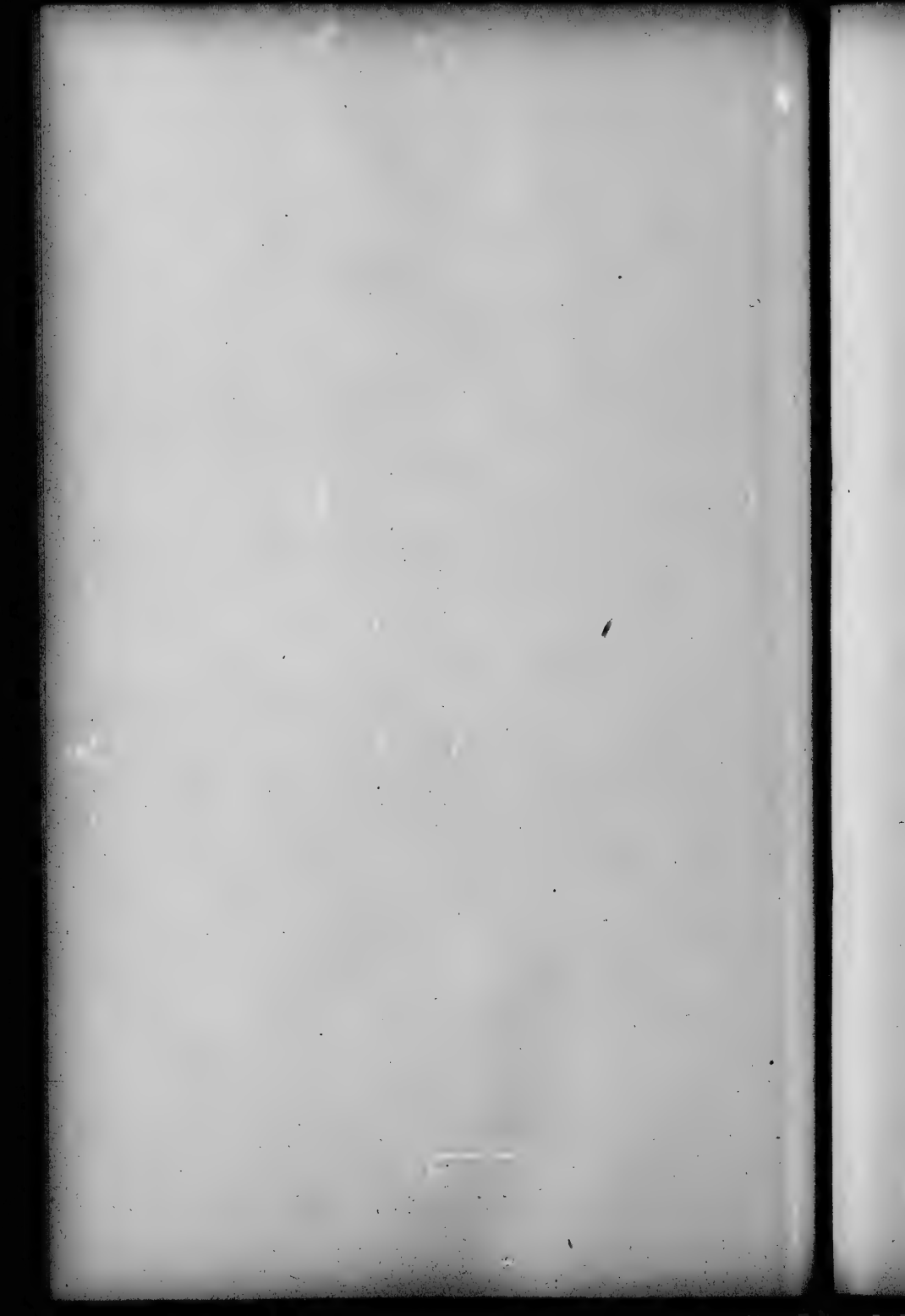
*Chronological Notes on the Progress of
Trade and Discovery in the Northern
Part of the North Pacific, with special
reference to Behring Sea and the
American Coast.*

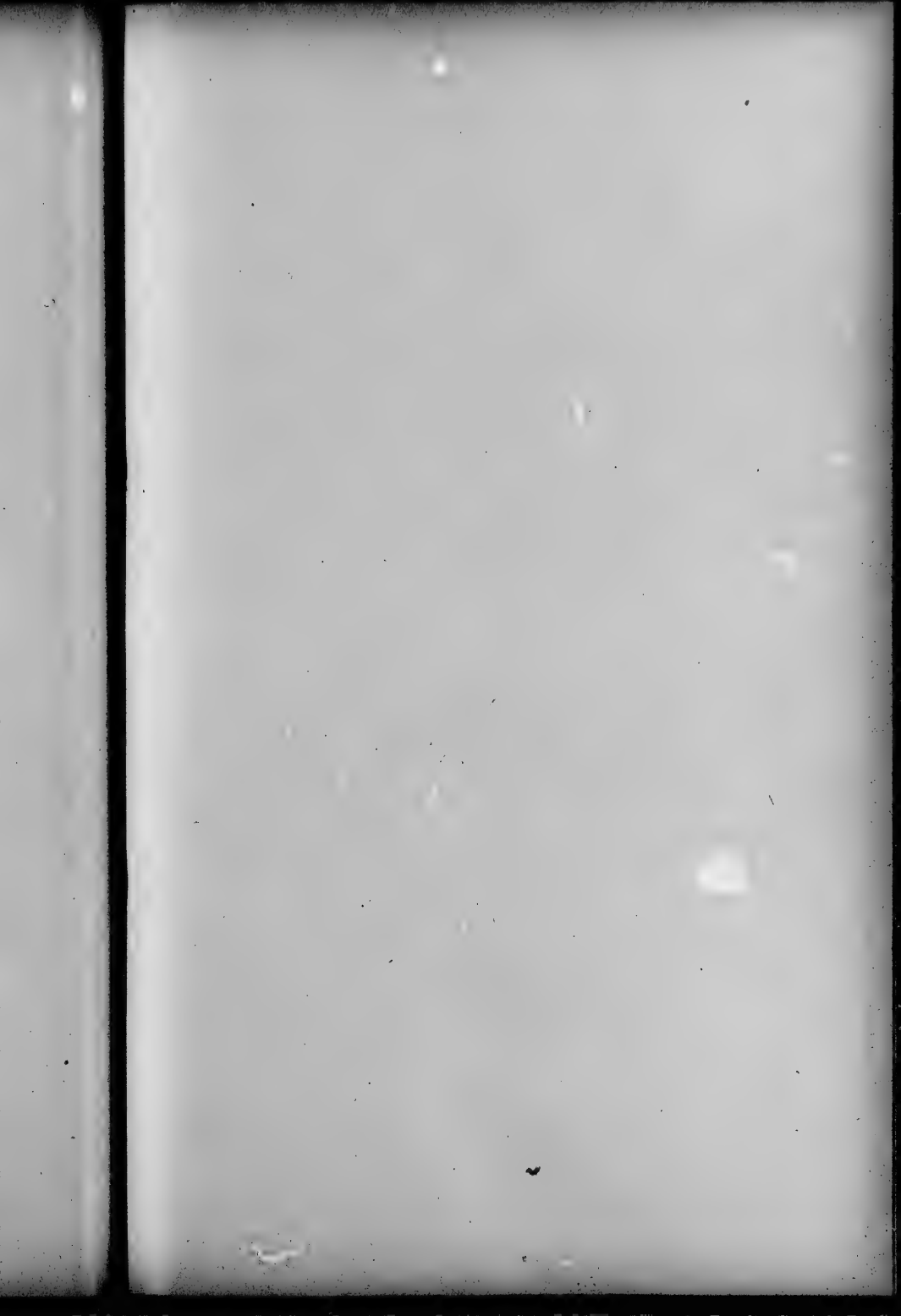
1728 to 1820.

[N.B. These notes are largely, but not exclusively, based on Bancroft's "History of Alaska" and the "History of the North-West Coast," by the same author. Those relating to the early Russian expeditions are, however, almost entirely based on the "History of Alaska."]

THOUGH vague reports of even earlier maritime discoveries on the Pacific coast of Asia by Russians exist, the first important voyage of which records are found is that of Behring in 1728 and 1729. This expedition had been planned by Peter the Great shortly before his death, but was actually dispatched by the Empress Catherine. The leader, Behring, was a Dane, enlisted in the service of Russia, and the instructions furnished for the guidance of the expedition had special reference to the setting at rest of the possible connection of the Continent of Asia with that of America. The result of this expedition was to outline, rather vaguely, the extreme eastern coast of Asia, and practically to prove the termination of this continent in that direction.

Behring's second expedition, after difficulties and long delays, sailed from Okhotsk in 1740, but in this year got no further than Kamtchatka. In 1741 a new start was made in the two little vessels which had been built and christened the "St. Peter" and "St. Paul," the former under the command of Behring himself, the latter under that of Chirikof. The two vessels became





separated, but, briefly stated, the voyage resulted in the discovery of the American coast by both captains. Chirikof sighted this coast or its off-lying islands between latitudes $55^{\circ} 41'$ and $57^{\circ} 15'$, but his landing party was massacred, and after great hardships he returned to the port of departure in Avacha Bay (Petropanulowski) in the same autumn. On the return voyage he saw several of the Aleutian Islands. Behring, sailing independently, reached Kyak Island, not far from the entrance to what afterwards became known as Prince William Sound. He landed on the island and saw the adjacent mainland to the north, but hastened to return. Like Chirikof, he saw several of the Aleutian Islands, and was eventually cast away on what is now known as Behring Island, 90 or 100 miles from the Kamtschatka coast, for which he was heading. Here the crew wintered, and Behring himself, with others, died, but in the following summer the remnant of the crew, in a newly-constructed craft, managed to reach Avacha Bay.

It is difficult to identify the particular islands of the Aleutian chain which were sighted by Behring and Chirikof, and both navigators seem to have supposed that these islands fringed the southern border of an extensive projection of the American continent, or formed parts of such a projection.

Unsatisfactory as these voyages undoubtedly were from a geographical point of view, it was upon their results that Russia chiefly based her subsequent pretensions to the ownership of the north-western part of North America. Bancroft, Alaska, p. 98.

The voyagers brought back various valuable furs, and chief amongst these the skins of the sea-otter.

It was not long before adventurous hunters and traders followed the lead thus given. In 1743 it is believed that Bassof visited Behring Island, returning in the following year to Kamtschatka. Three subsequent voyages appear to have been made by the same adventurer—the last in 1749. Ibid., pp. 98, 100.

While Bassof was still absent on his second voyage, Lebedef sailed in 1745. He appears to have visited Agatu and Attu, of the Aleutian chain, and after various bloody encounters with the natives, to have made his way back to Kamtschatka in 1747.

In 1746, allured by the accounts of Bassof's

success, two more vessels sailed, under the auspices of several Siberian merchants, and, after wintering on the Commander Islands, returned to Kamchatka in the following year.

It is unnecessary to follow the fur-trading voyages of succeeding adventurers in detail. Many parties set out from the Kamchatkan coast for the newly-discovered lands, in small and badly-equipped vessels, and obtained more or less satisfactory returns in skins. The sole object of these expeditions was furs, and though some increased knowledge of the Aleutian Islands resulted from them, it was of a crude and unsatisfactory kind, and violence and bloodshed everywhere marked the progress of the traders. Gradually the progress of discovery crept eastward, and, in 1768, Glotof reached Kodiak Island, where again conflicts with the natives occurred. In 1764-68, Synd, a Lieutenant of the Russian navy, made an expedition along the coast to Behring Strait, but with unsatisfactory geographical results. In 1766, under the authority of a special Ukase, Krenitzin embarked from Okhotak with several small vessels, meeting with disaster, but, in 1768, with two vessels, of which Levashef commanded one, he again sailed. They wintered on the Aleutian Islands (Krenitzin on Unimak, and Levashef on Unalaska), and after the usual number of conflicts with the natives, retired to Kamchatka in 1769.

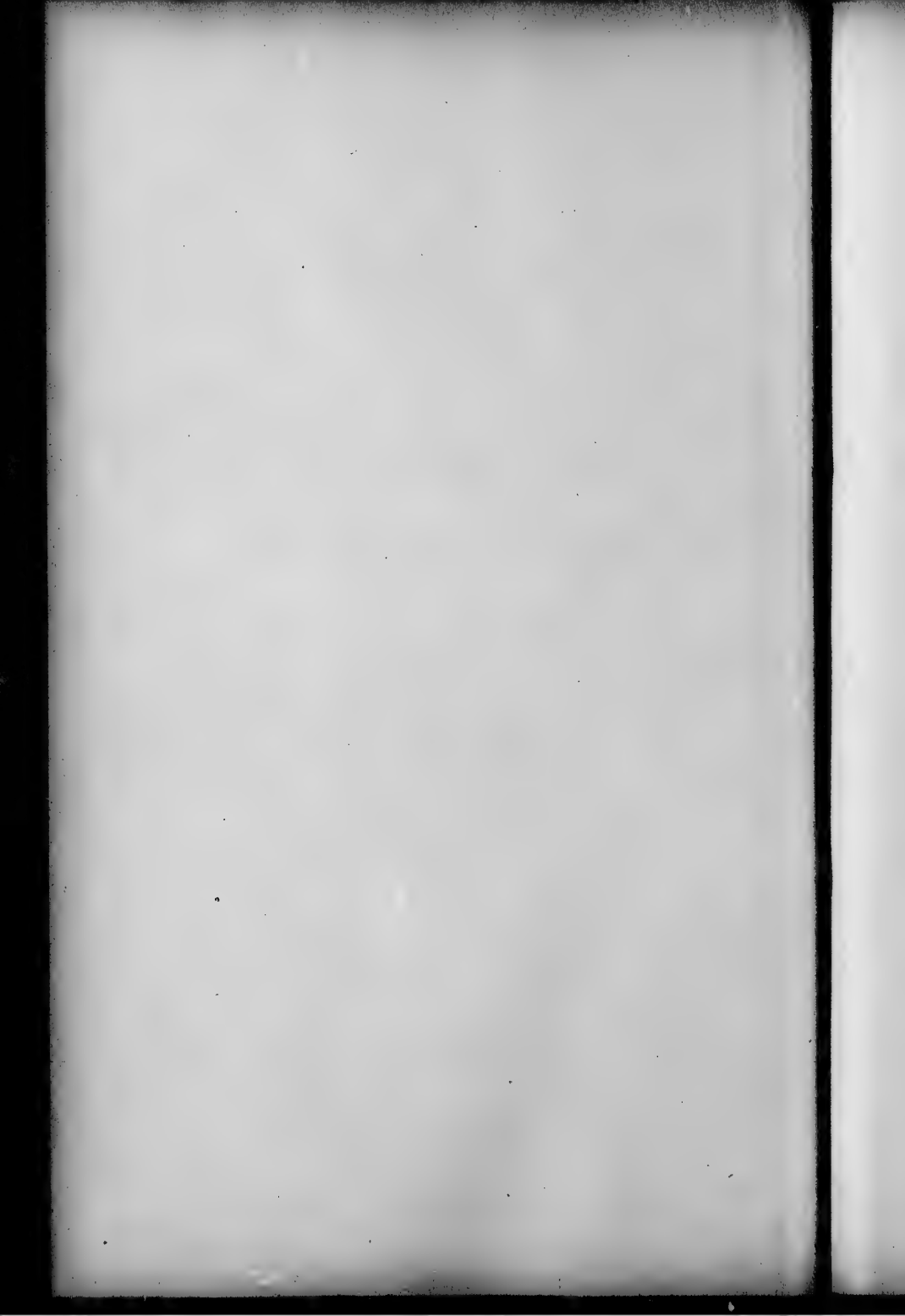
Meanwhile, other small mercantile expeditions embarked in the search for furs, some of them being successful, but of which the records are very scant, and the actual additions to geographical knowledge insignificant. The traders often wintered on islands of the Aleutian chain, but established no permanent stations there. Of this period on to about 1779, Bancroft writes:—

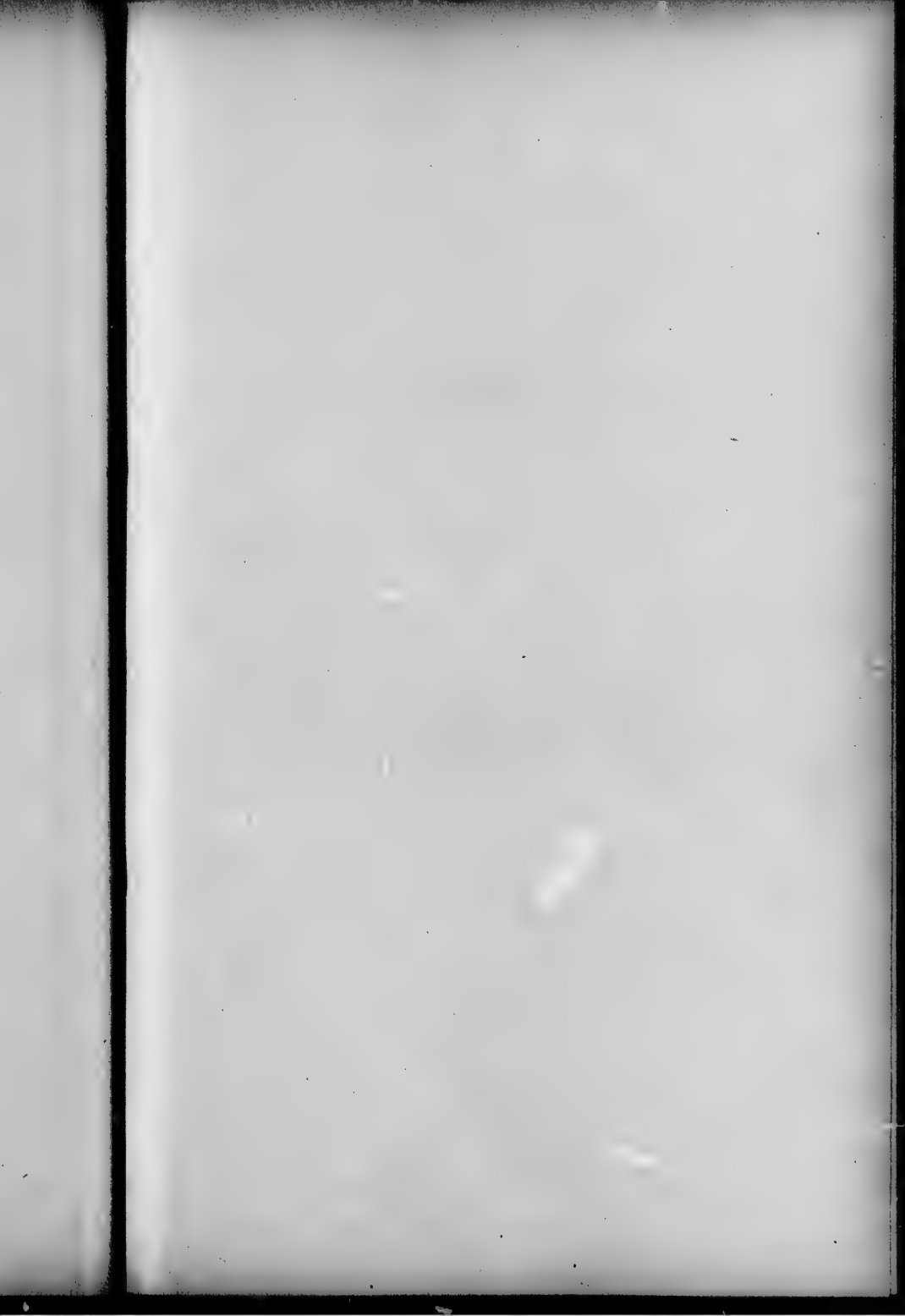
Bancroft, Alaska,
p. 174.

"From this time to the visit of Captain Cook, single traders and small Companies continued the traffic with the islands in much the same manner as before, though a general tendency of consolidation was perceptible."

Meanwhile, the extension of Russian influence to the eastward from Asia was not unnoticed by Spain, and in 1774, Perez was dispatched, under official instructions from the Viceroy of Mexico, to the north. Perez, however, extended his voyage only to the southern part of what is now known as Alaska.

In 1775, however, Hecata, sent by the same





authority, explored the coast of America northward as far as the 57th or 58th degree of latitude, taking possession in the name of Spain.

In 1778, Captain Cook reached the American coast of the North Pacific, with two well-equipped vessels. He had been dispatched by the English Government, with instructions from the Admiralty to make a thorough search for any navigable passage from the Pacific to the North Atlantic, as far as latitude 65° north, and further if possible. His instructions added :—

"You are also, with the consent of the natives, to take possession, in the name of the King of Great Britain, of convenient situations in such countries as you may discover, that have not already been discovered or visited by any European Power, but if you find the countries so discovered are uninhabited, you are to take possession of them for His Majesty, by setting up proper marks and inscriptions as first discoverers and possessors."

In pursuance of his instructions, Cook, falling in with the coast near latitude 44°, sailed northward, and, after spending some time at Nootka, on what is now known as Vancouver Island, continued to the north, where he explored and named, particularly, the region of Prince William's Sound, and Cook's River, or Inlet, taking possession of the coasts there. At Cook's Inlet he found traces of Russian trade at this time, but no Russians. Proceeding to Unalaska, one of the Aleutian Islands, he again heard of the Russians, but did not at this time meet with them.

Thence he sailed eastward to Bristol Bay, Bazareff, Alaska, pp. 166, 167. landing and taking possession near the mouth of the Kuskoquim River, and thereafter explored and fixed the position of the American coast northward as far as Icy Cape, beyond Behring Strait. Turned back at length by the Arctic ice, he spent some time on his way south in mapping Norton Sound, eventually returning to Unalaska. Here, on this occasion, he found Russian traders preparing to spend the winter in this, their favourite resort for that purpose. If it be assumed that at this time Unalaska was sub-permanently occupied for Russia by these traders, it is evident that it was at the same time their furthest eastern point of control. Their trading voyages had, it is true, extended much further, but only in a desultory way.

The entire eastern coast of what is now known

as Behring Sea^f was utterly unknown to them, and it was not till four years later, and in consequence of information furnished to them by Captain Cook with regard to the existence of Prince William Sound, that they made a first attempt to initiate a direct trade with the continental land of America.

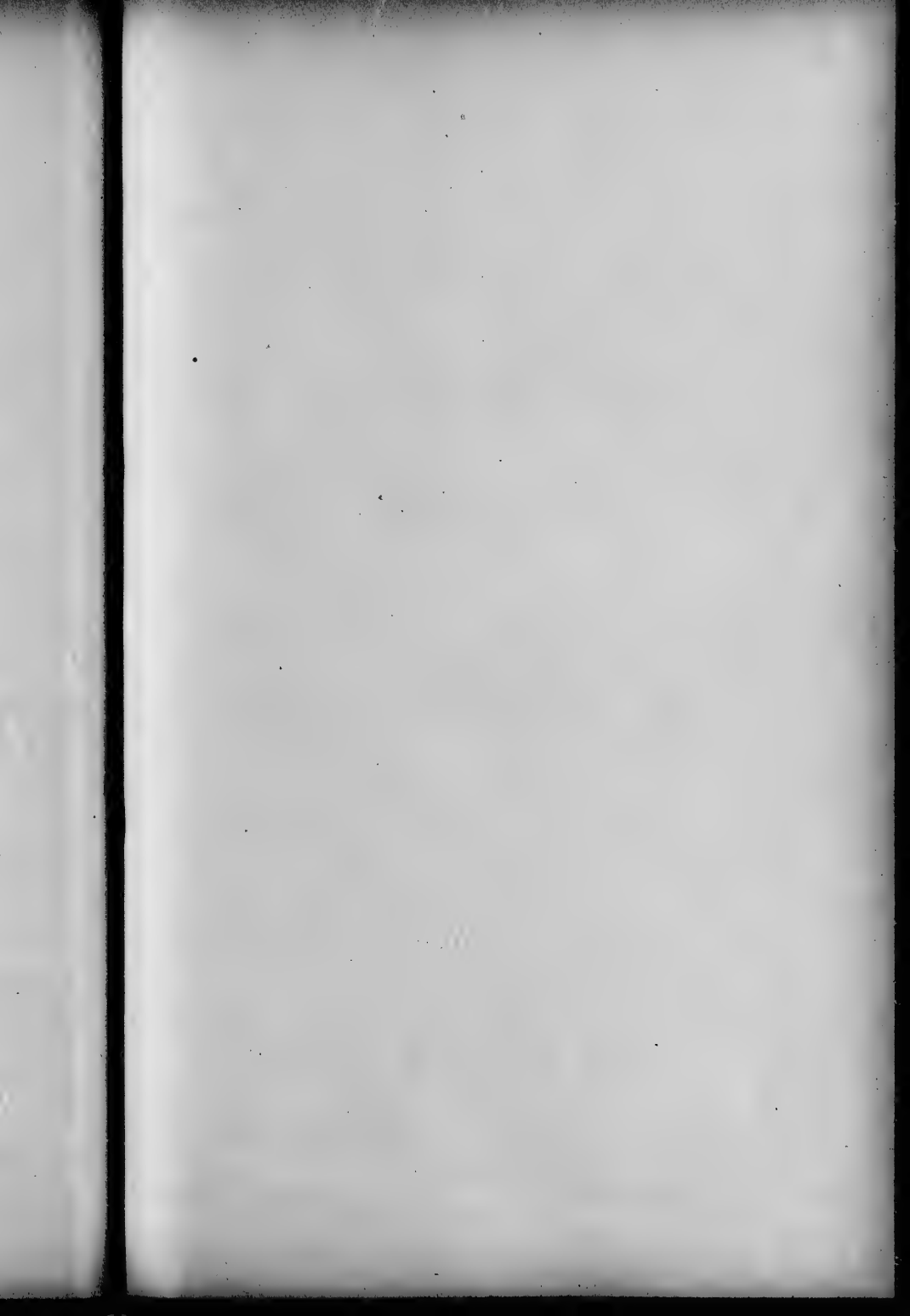
While in the Sandwich Islands, in the following winter, Cook was killed, but the ships returning in 1779 under the command of Clarke, made further explorations in Behring Sea and the Arctic Ocean to the north of it.

Cook's expedition was of a very different order from those of most of the Russian adventurers. Not only was it officially accredited for purposes of discovery and acquisition of territory, but it was besides fully equipped for these purposes, and the results were correspondingly important. For the first time the main outlines of the north-western part of the Continent of America, and particularly those of the eastern coast of Behring Sea, were correctly traced, and this in so satisfactory a manner that Cook's surveys still remain in many cases the only authority up to the present day. A further and most important result was the opening up of the trade in furs from the north-western part of America with China, by sea, which arose in consequence of the high prices obtained for such furs collected by members of the expedition when it subsequently visited the Chinese ports.

The whole results of Cook's expedition were fully published and rendered available to the world in 1784.

With the few exceptions already noted, the antecedent Russian "explorations" had consisted more in the ill-found trading expeditions of illiterate adventurers, the results of which, such as they were, were in many cases only made known long afterwards, and in some instances yet remain subject to discussion and doubt. Bancroft, with commendable industry, has brought together from many sources, some still in manuscript, the various accounts which still remain of these voyages. Frequently, indeed, the results of these voyages were carefully concealed for trade purposes, and even the Map embodying Behring's preliminary discoveries, did not see the light till some twenty years after his death.

In 1779, another officially-dispatched Spanish
[673]



expedition sailed under Arteaga and Quadra, who explored parts of the coast northward from about latitude 55°, and westward to Mount St. Elias. Special attention was given to Cook's Inlet, and possession was taken in the name of Spain at several places.

In 1783, an attempt was made by a number of Russian adventurers combined under Zaikof to utilize the knowledge obtained by the latter directly from Captain Cook by extending their operations to the mainland coast of America. The great bay which Cook had named Prince William Sound was chosen as the destination of the expedition, but after wintering there in great misery, caused by scurvy and constant attacks from the natives, the survivors of the party abandoned the enterprise.

"Thus unfortunately ended the attempt of the Russians to gain a foothold upon the continental coast of America. Bancroft, Alaska, pp. 190, 191.

"This failure to extend their field of operations seriously checked the spirit of enterprise which had hitherto manifested itself among the Siberian merchants, and for some time only one small vessel was dispatched from Siberia for the Aleutian Islands."

In 1784, however, Shelikof appears "as the father and founder of Russian colonies in America." He sailed from Okhotsk in 1783, but passed the winter on Behring Island. In the following year he visited Unalaska and reached Kadiak. Preparations for permanent occupation were begun, and buildings were erected at a place named Three Saints Bay.

The natives were hostile, but the Russians managed to hold their own. The seasons of 1785 and 1786 were spent in exploring and trading on the coasts of the island and adjacent mainland, where several outposts were established. In 1786, Shelikof himself returned to Siberia for the purpose of endeavouring to obtain exclusive rights of trade for the Company which he represented. Shelikof is represented as urging his request on the plea that—

"the advantages which rightfully belong to the subjects of Russia alone are converted to the benefit of other nations who have no claim upon the country and no right to the products of its waters."

In 1786, Captain Hanna, in the "Sea Otter," is stated to have been the first to engage in the

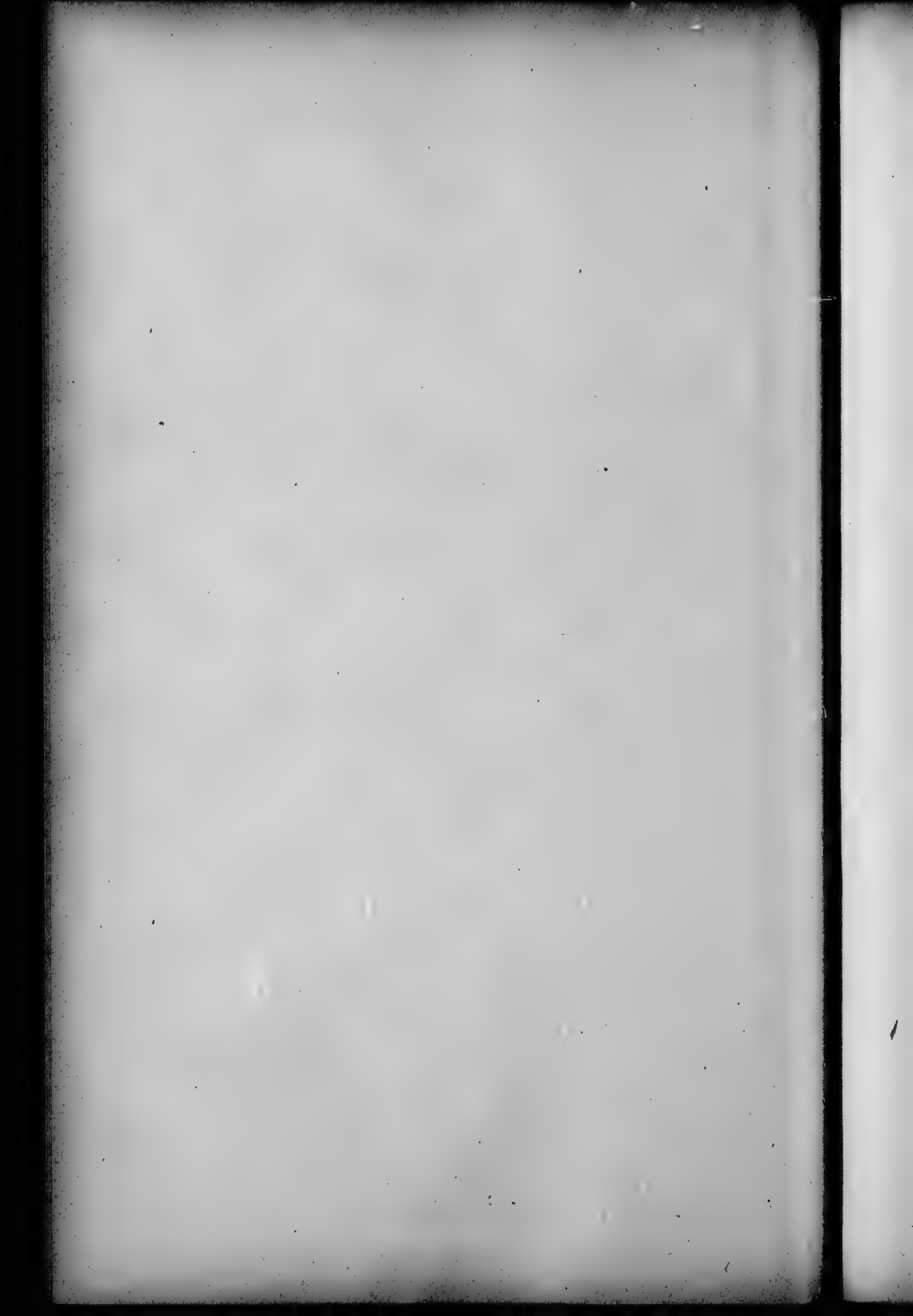
trade between China and the north-west coast of America by sea, to the possibilities of which attention had been drawn by Captain Cook. He made a second voyage in the following year, but his trading operations appear to have been confined to the northern coasts of Vancouver Island.

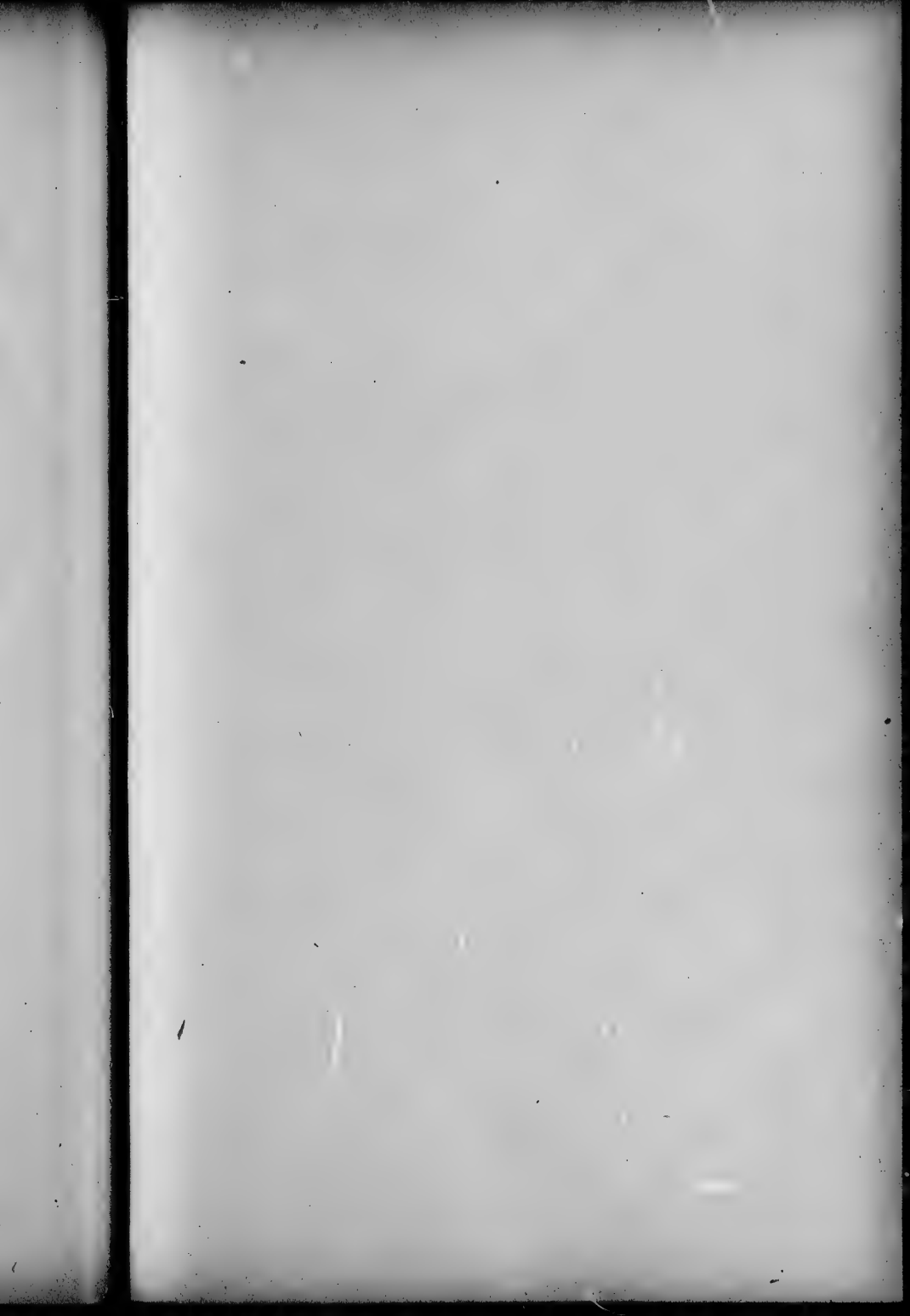
Sauer's account
of Billings'
Expedition,
London, 1802,
pp. 279, 281.

Other commercial adventurers on the same quest were practically contemporaneous with Hanna, and the year 1786 is an important one in connection with the whole region. Thus, the "Captain Cook" and "Experiment," two vessels from Bombay, visited and traded at Nootka and Prince William Sound. An English vessel, the "Lark," Captain Peters, from Bengal via Malacca and Canton, after trading at Petropaulowski, in Kamchatka, sailed for Copper Island with the supposed purpose, as alleged, of obtaining a cargo of copper there. We happen to hear of this vessel incidentally, as she was wrecked on Behring Island, and of her crew of seventy but two men were saved.

Also, in the same year, Portlock and Dixon and Meares arrived upon the American coast, and both expeditions traded and explored far to the northward. These expeditions are specially important as their results were published in England in 1789 and 1790 respectively, while the voyages of other contemporaneous traders were not recorded.

Portlock and Dixon, who had sailed from London in 1785, in the "King George" and "Queen Charlotte," first visited Cook's Inlet, where they found a party of Russians from Unalaska encamped, with their boats drawn up, but without any fixed establishment. Trade was carried on with the natives here, and subsequently at various points along what is now the Alaskan coast, to the eastward and southward. Various harbours were also surveyed. In the following year Portlock and Dixon returned to the vicinity of Cook's Inlet and Prince William Sound, where they found Meares, who had spent the previous winter there. The ships then cruised eastward and southward, stopping at Port Malgrave, Norfolk Sound, and many other places, and eventually reaching the Queen Charlotte Islands and other parts of what is now the coast of British Columbia. Very substantial additions were made to the geography of the coast by these voyagers.





Meares, sailing from Bengal in the "Nootka," early in the year, reached the Islands of Atka and Amlia of the Aleutian chain, staying two days at the latter and holding communication with Russians and natives there. On the way eastward others of the Aleutian Islands were seen, and Meares was piloted into a harbour on Unalaska by a Russian who came off to the ship. He describes the Russian establishment as consisting of underground huts similar to those of the natives, and their mode of life as miserable. He was further informed that the traders were relieved and returned to Siberia after eight years of residence. Leaving Unalaska he coasted eastward to Cook's Inlet and Prince William Sound, where, as above stated, he passed the following winter. Russians were again met with near Cook's River and Kadiak Island.

Meares' later voyage in 1788 and 1789 was directed to the coast south of what is now Alaska, upon which coast, in connection with the Nootka controversy, he played a prominent part.

Also, in 1786, La Pérouse, then engaged in his voyage round the world, under instructions from the Government of France to visit such ports of the northern coast of America as had not been examined by Cook, and to investigate and report on various matters, including the fur trade, first made the land near Mount St. Elias. Thence he sailed eastward and southward, calling at and examining various places in that direction, along the whole of what is now comprised in the Alaskan coast there. At Stua Bay he obtained in trade 1,000 sea-otter skins.

The Russian Pribyloff, in the same year, discovered the islands in Behring Sea now known by his name.

In 1788, the vessel "Trekh Sviatileli," in connection with Shelikof's projects, explored Prince William Sound, which, as we have already seen, was not new ground. Yakutat Bay, where Dixon had been before, was also examined, and Stua Bay, already known to La Pérouse under the name of "Port des Français," was "discovered." Possession was taken for Russia at various points along the coast.

"Roused by the reports of La Pérouse and others concerning the spread of Russian Settlements in the far
Bancroft, Alaska, p. 270.

north, and the influx of English and other trading vessels, the Spanish Government in 1787 ordered the Viceroy of Mexico to dispatch at once an expedition to verify these accounts and examine the north-western coast for places that might be desirable of occupation in anticipation of foreign designs."

Bancroft, Alaska,
pp. 271, 272.

In consequence, in 1788, the "Princesa" and "San Carlos," under Martinez and Haro, sailed. They proceeded direct to Prince William Sound, where no Russians were seen. Haro, however, discovered the Russian colony at Three Saints or Kadiak Island, and held amicable relations with the Russians there. Delcrof, in charge, endeavoured to impress the Spaniard with the belief that the Russian Government was firmly established on the coast as far south as latitude 52°, though, as a matter of fact, the little colony on Kadiak was at the moment the easternmost permanently occupied place. He further even hinted at a prospective establishment at Nootka, on Vancouver Island, which probably, in effect, led to the temporary Spanish occupation of that place.

The voyagers next proceeded to Unalaska, of which they took possession for Spain, but afterwards discovered the Russian post, where they remained for some time, and were again hospitably entertained.

Upon the conflict of interests at this time upon this part of the Alaskan coast, and the rival claims to territory there, Bancroft makes the following remarks:—

Alaska, p. 267.

"The events of 1787–88 must have been puzzling to the natives of Prince William Sound. Englishmen under the English flag, Englishmen under the Portuguese flag, Spaniards, and Russians were cruising about, often within a few miles of each other, taking possession, for one nation or the other, of all the land in sight. The 'Princesa' from Mexico appears to have left Nuchek two days before the Russians arrived there; the 'Prince of Wales,' Captain Hutchins, must have been at anchor in Spring Corner Cove about the same time, and shortly after, the 'Iphigenia,' Captain Douglas, entered the same cove, while Portlock left traces near by two months later. Douglas touched the southern part of Alaska also in the following year, and sought to acquire fame by renaming Dixon Entrance after himself."

In 1787, a Russian scientific exploring expedition, of which great things were expected, had sailed from Okhotsk, going eastward along the Asiatic coast. This was under the command



of Billings, an Englishman in the Russian service, who had formerly served under Cook. In 1780, a second departure was made, this time from Petropaulowski. Touching at some of the Aleutian Islands, Kadiak was eventually reached, and in the autumn the return voyage to Petropaulowski was made. In the following year the expedition again visited Unalaska, sailed north to St. Lawrence Island and the Asiatic coast (where Billings himself left to proceed overland to Russia), returned under Sarychef to Unalaska, wintered there, and in 1782 regained Petropaulowski. The results of the entire expedition were, however, disappointing. Bancroft writes:—

"The geographical results may be set down as next to nothing, with the exception of the thorough surveys of Captain's Bay in Iliulik Harbour on Unalaska Island. Every other part of the work had already been done by Cook.

Alaska, p. 297.

.

"The principal benefit derived from this costly undertaking was the ventilation of abuses practised by unscrupulous traders on helpless natives. The authorities in Siberia and St. Petersburg became at last convinced that an end must be put to the barbarous rule of the 'promyshleniki.' The cheapest and easiest way to accomplish this was to grant control of the whole business with American coasts and islands to one strong Company that might be held responsible to the Government for its conduct."

Thus, in the reports brought back by the members of this expedition may be traced the beginning of the future grant of a monopoly.

In 1788, vessels from the United States first appeared as traders on the north-west coast of America. Two vessels, under Kendrick and Gray respectively, arrived, while the Englishmen Meares and Douglas were also trading on the coast. They are mentioned in Bancroft's "History of the North-West Coast," and, though it is not known (except in the case of Douglas' vessel, the "Iphigenia") that they extended their voyages to what is now recognized as the Alaskan coast, there was at the time no definition separating this from other parts of the coast. The presence of these vessels is thus of interest in connection with the general question, though it is not meant to affirm that in their case, or in those of other vessels quoted in subsequent years from the records embodied in the "History of the North-West Coast," that the vessels so

See "History of North-West Coast," p. 186.

enumerated actually in all instances visited that part of the northern coast laid claim to in 1799 or 1821 by Russia.

North-West
Coast,
pp. 204-212.

In 1789, twelve vessels at least are known to have been trading on the north-west coast. The well-known Nootka seizures by the Spanish occurred in this year.

Alaska, p. 273.

In 1790, Tidalgo sailed from Nootka, then occupied by Spain, for the purpose of completing the examination of parts of the northern coast which had not been visited by Martinez. He examined Prince William Sound and Cook's Inlet, and called at the Russian Settlement at Kadiak.

Ibid., p. 225.

In the same year, we are informed that Baranoff, then in charge at Kadiak, found the trading-vessel "Phoenix," Captain Moore, from the East Indies, in Prince William Sound.

Ibid., p. 285.

At this time, Sweden and Russia being at war, a Swedish cruiser was dispatched to the North Pacific. She visited the Aleutian Islands, but finding there no Government establishments to attack, but only traders living in "abject misery," her Commander not only refrained from disturbing them, but gave some supplies to Pribyloff.

Ibid., p. 274.

In 1791, Malaspina, sailing from Spain, under orders from his Government, on a scientific exploring expedition, of which one of the objects was to search for a communication from the North Pacific to the Atlantic, visited several places on what is now the Alaskan coast, including Prince William Sound.

Ibid., p. 275.

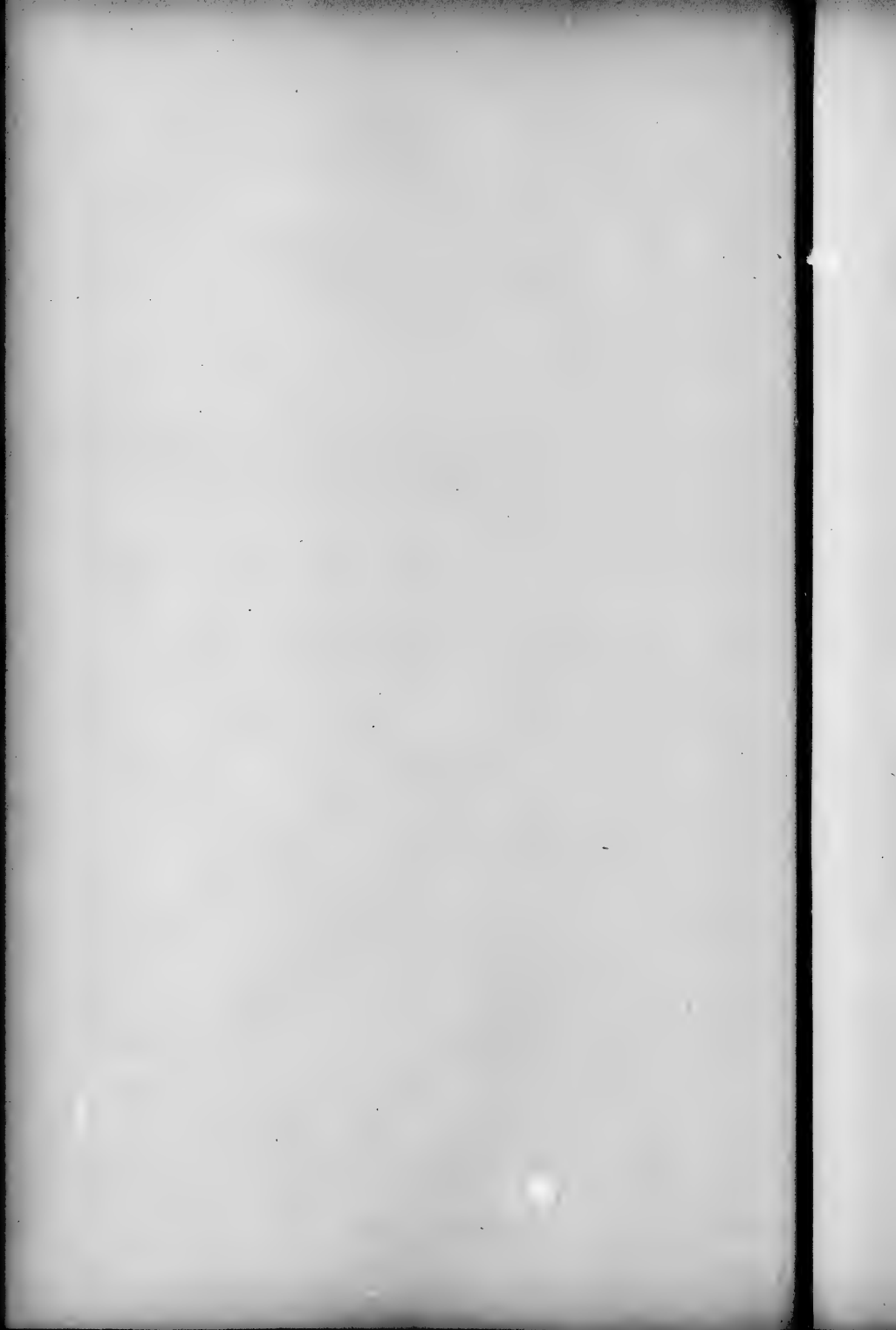
Marchand, in the "Solide," from France, on a voyage of trade and circumnavigation, was also on the same coast in this year. He examined several places in South-Eastern Alaska, and found the natives to be fully supplied with European goods. Douglas, in the "Iphigenia," also visited Cook's Inlet in this year.

North-West
Coast,
pp. 260-287.

Besides these above named, at least eight trading-vessels are known to have been on the coast, of which seven were Americans.

Alaska, p. 244.

In 1792, Cramano, setting out from Nootka, explored Port Bucarelli, in South-Eastern Alaska, and it is reported that in this year fully twenty-eight vessels were upon the coast, at least half of them being engaged in the fur trade. Vancouver (vol. iii, p. 498) gives a list of twenty-one vessels for the same year, divided as follows:—From England 6, from East Indies 2, from





China 3, from United States 7, from Portugal 2, and from France 1.

On the Asiatic coast, the "Halcyon," Captain Barclay, visited Petropaulowski for purposes of trade—

"But the stupid port authorities would not allow the Captain to dispose of any of his goods." Alaska, p. 296.

A French vessel, "La Flavia," arriving at the same place soon after with recommendatory letters from St. Petersburg, was allowed to spend the winter disposing of her cargo, which consisted chiefly of brandy. Ibid., p. 296.

In 1793, Vancouver, who had been dispatched by the English Government with two vessels, the "Discovery" and "Chatham," for the purpose of finally deciding the existence or otherwise of a communication between the Pacific and Atlantic by the exploration of all remaining inlets on the north-west coast, was occupied in the pursuance of this mission in what now constitutes South-Eastern Alaska. In the previous year he had explored and surveyed the complicated waters of what is now the British Columbian coast. After wintering in the south, he returned to complete his work in 1794. He first surveyed Cook's Inlet to its head, visiting a Russian post under Zaikof on this inlet. Prince William Sound, Kadiak, and the coast extending to Yakutat Bay were then in turn carefully laid down, and his surveys finally connected with those which he had in the preceding year carried up from the southward.

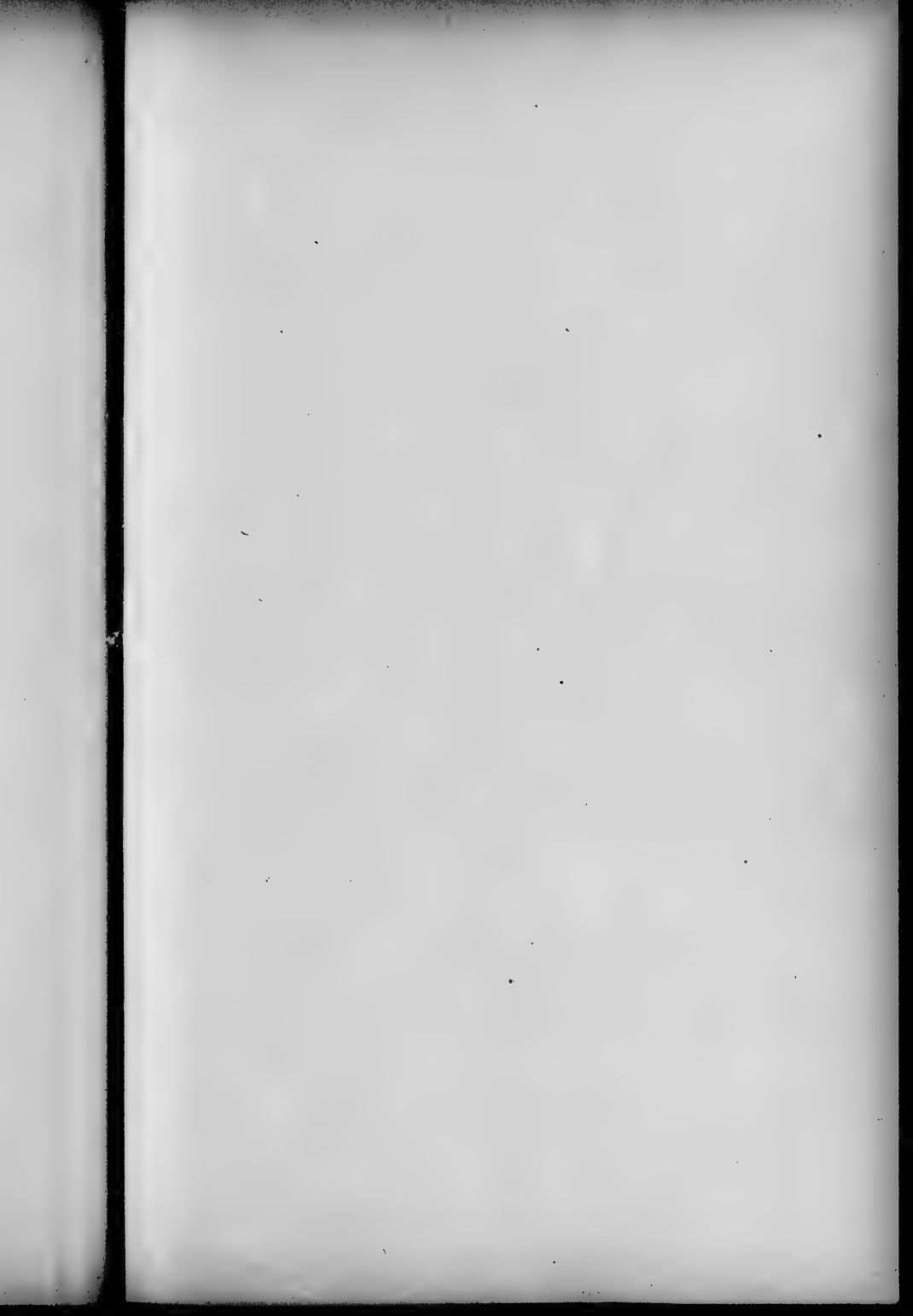
Vancouver found, at this time, the furthest East Russian trading station to be situated at Port Etches, Hinchinbrook Island, in the entrance to Prince William Sound, and this had only been established in the preceding summer. He ascertained, however, that roving expeditions were sent by the Russians much further to the east and south-east along the coast. He

"clearly understood that the Russian Government had little to do with these Settlements; that they were solely under the direction and support of independent mercantile Companies. . . . Not the least attention whatever is paid to the cultivation of the land, or to any other object but that of collecting furs, which is principally done by the Indians." Vancouver, vol. iii, p. 199.

Near Yakutat Bay he fell in with the "Jackall," an English trading-vessel, which was North-West Coast, p. 293.

then upon the coast for the third consecutive season, and further to the south-eastward he met with the "Arthur," Captain Barber, from Bengal. These were, of course, but chance meetings, and from these or other such notices of explorers we are unable to arrive at complete information respecting the number of vessels then engaged in trade in these regions. Almost nothing can be ascertained as to the trading-vessels occupied on the coast generally in this and the following years; what little is known is derived chiefly from Vancouver's journals. Vancouver in effect supplemented and completed the surveys of the coast of North-Western America already made by Cook. The results of his painstaking and detailed work had the utmost value, and for many years thereafter constituted the sole authoritative data for the delineation of the coast from Cook's Inlet eastward and southward on the Maps of all nations. His surveys are only at the present day being gradually superseded by more exact work, and his nomenclature has been practically adopted for nearly all places on the coast. Acting on the facts of Russian settlement, which led him to believe that the "American Continent and adjacent islands as far to the eastward as the meridian of Kaye's Island belonged exclusively to the Russian Empire," but having in view also the further extent of the trading enterprises of the Russians, he took possession for Great Britain to a point only as far north as Cross Sound, about latitude 58°. The results of Vancouver's work were fully published in England in 1798, and thus much of the coast which had been examined in earlier years, though in a more or less desultory manner, by the Spaniards, lost the traces of their work which would otherwise have been afforded in the nomenclature of places. Spain, like Russia, guarded too well the secrets of her explorations, the extent of which only became known, in many instances, long afterwards, and then by special research among the buried archives of the State.

In 1794, Purtov was sent by Baranoff to effect an establishment at Yakutat Bay, to the eastward of any then occupied Russian post. Here he found himself running a race for occupation with the men of the rival Ledebef Company. Trouble with the natives at Yakutat was only averted by the presence of Vancouver's vessel. The natives were already found in possession of



many guns and plenty of ammunition, showing that European trading-vessels had been there, and at this very time the "Jackall" arrived, and, after Vancouver's departure, Captain Brown assisted Purtof against the natives.

The names of four trading-vessels on the north-west coast, including the "Jackall," are all that have been found for this year. North-West Coast, p. 297.

1795 and 1796. Efforts appear to have been chiefly directed by Baranoff (then in charge for the Shelikof Company) to the establishment of the new colony, for which convict settlers had been sent out. In the latter year, Shields, an Englishman in Baranoff's service, was sent in the "Olga" (which he had built at Kadiak), in company with a fleet of canoes, to hunt and trade for furs in Norfolk Sound.

1795. A trader named the "Phoenix," from Bengal, is noted as having been seen on the north-west coast, but other details are wanting. Ibid., p. 304.

1796. At least three trading-vessels are known to have been on the north-west coast in this year. Ibid., p. 305.

1797. The names of four traders on the north-west coast are known, but this probably comprised but a small part of the fleet. Ibid., p. 306.

1798. Similarly, in this year, the names of only six trading-vessels are known. Ibid.

1799. Baranoff set out from Kadiak in two small vessels, and accompanied by a numerous fleet of canoes, for the purpose of planting a Russian establishment further to the eastward and southward than had yet been attempted. A site near that of the present position of Sitka was chosen, and named St. Michael. Shortly after his arrival, the "Caroline," Captain Cleveland, from Boston, put in an appearance.

"Several other American vessels, among them the brig 'Eliza,' under Captain Rowan, visited the bay during the summer, and absorbed the trade, while the Russians were preparing to occupying the field in the future." Alaska, p. 339.

The names of seven vessels trading on the north-west coast have been recorded in this year. North-West Coast, p. 307.

In 1800, we hear of the ship "Enterprise," from New York, arriving at Kadiak, to which place Baranoff had by this time himself returned. Troubles with the natives in various quarters continued. Ibid., p. 308.

The names of seven traders on the north-west coast are again known in this year.

North-West
Coast, p. 310.

Alaska,
pp. 404-409.

Ibid., p. 416.

North-West
Coast, p. 311.

Alaska, p. 417.

Ibid., pp. 477, 478.

North-West
Coast, pp. 312-
317.
Ibid., pp. 318, 319.

1801. At least thirteen vessels from the United States were trading on the north-west coast.

In 1802, the Russian establishment at Sitka was destroyed, and nearly all the Russians there were massacred by the natives. According to Lisiansky, the natives were assisted by three deserters from an American vessel, the "Jenny," which had called at Sitka not long before. Shortly after the massacre the English vessel "Unicorn," Captain Barber, arrived at Sitka, and two other vessels, reported by the Russian survivors as English, but one of these Bancroft believes to have been the American vessel "Alert."

In this year the news of the Charter granted to the Russian-American Company reached Baranoff.

Krusenstern, having visited China, in this year presented a Memorial to the Russian Government calling attention to the advantages offered by the trade in furs from America direct to Chinese ports, and suggesting that Russia should engage in it.

Ten trading-vessels are recorded to have been on the north-west coast, besides others which have escaped record.

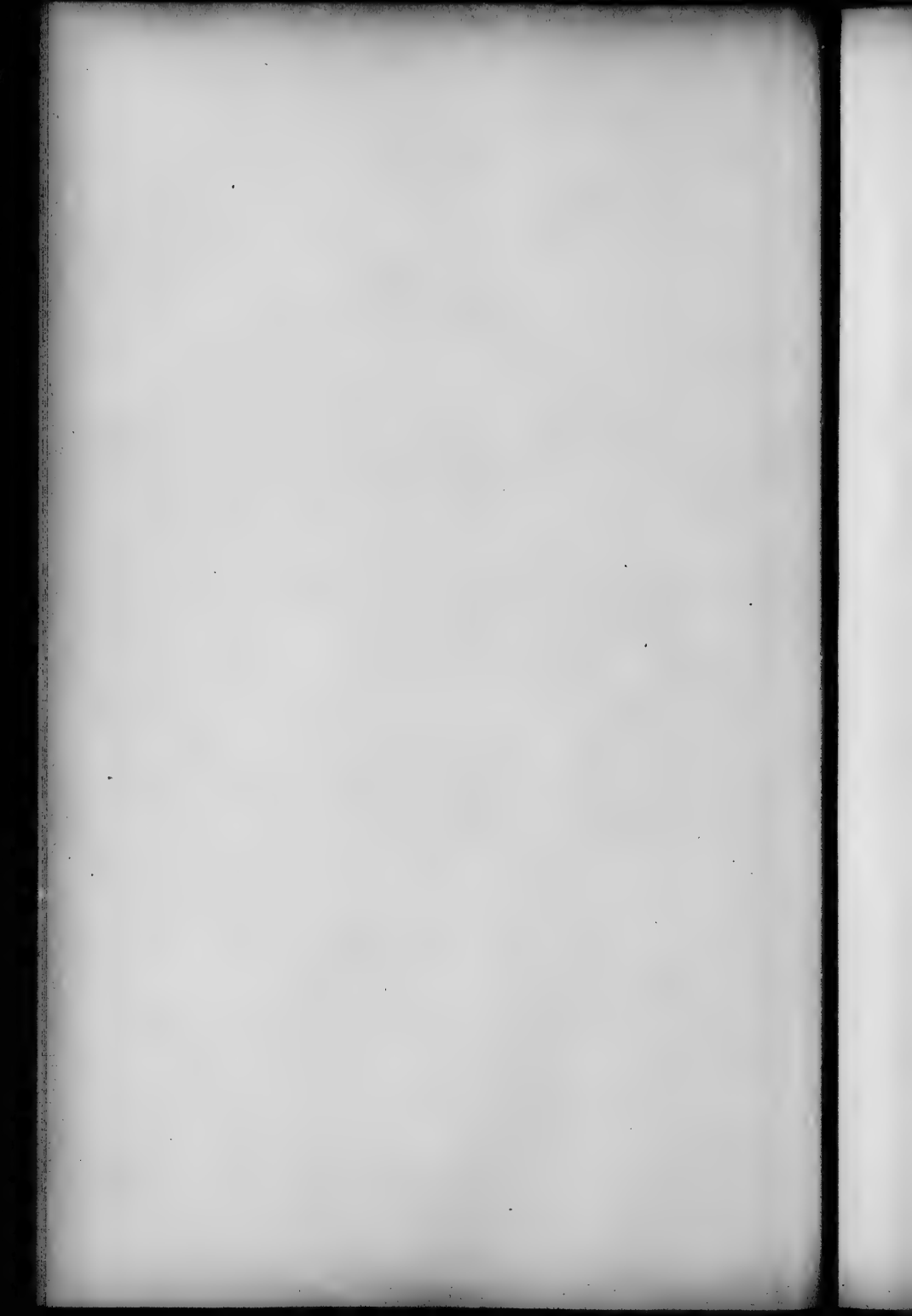
1803. The condition of affairs at Unalaska arising from disease and the non-arrival of supplies became so serious that Baranoff is believed to have contemplated its abandonment. He ordered Banner to take the best men from there to the Pribyloff Islands to collect the furs which the natives must have accumulated there. These islands had then not been visited for many years.

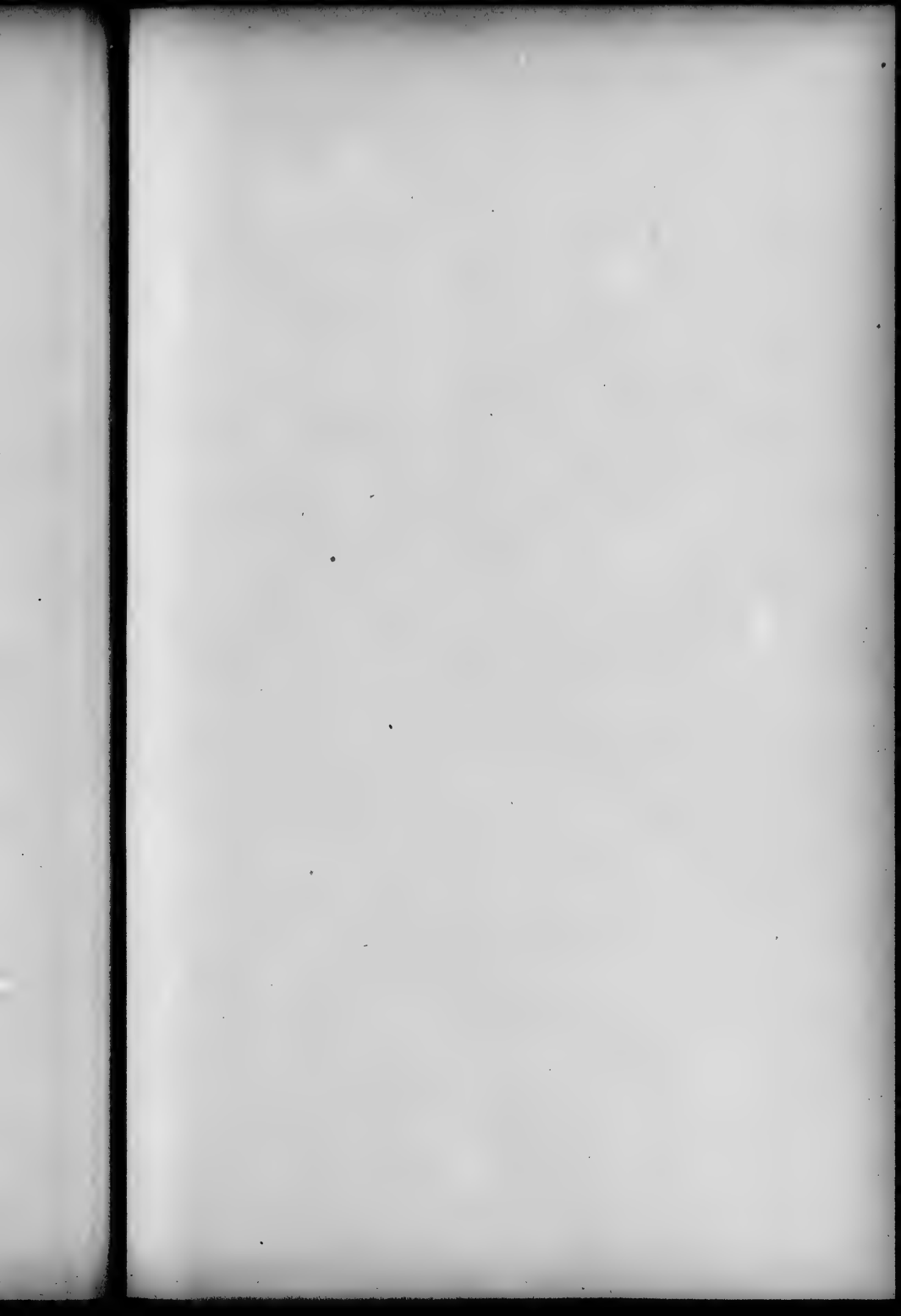
The American vessel "O'Cain," Captain O'Cain, arriving at Kadiak, effected an interchange of goods for furs from Baranoff. The captain also arranged for Aleutian hunters to go with him to the Californian coast in quest of fur-seals and sea-otters.

"Thus was inaugurated a series of hunting expeditions beyond the borders of the Russian colonies, which continued for many years with varying success."

The names of five vessels trading on the north-west coast are known.

1804. Lisianski, of Krusenstern's expedition, arrived at Kadiak in the "Neva," and being apprised of Baranoff's intention of recapturing





Sitka, sailed again for that place, and, in October, Sitka was reoccupied and rebuilt on a new site.

The names of four vessels trading on the north-west coast can be found in this year.

During 1805, Lisianski revisited Sitka, or New Alaska, p. 448. Archangel, as it was then called. A Treaty was made with the Indians, and the "Neva" sailed with a valuable cargo of furs for China. In this year we hear of two American vessels at New Archangel, one named the "Juno."

The names of six vessels, including the "Juno," North-West Coast, p. 390. are known as trading on the north-west coast.

1806. The Russian Ambassador Resenoff, who had sailed with Krusenstern in the "Nadeshta," visited the Pribyloff Islands on the Company's brig "Maria." Then he endeavoured to stop the wasteful slaughter of fur-seals which had hitherto been in progress. Writing from Unalaska on his return, he says :—

"These islands would be an inexhaustible source of Alaska, p. 446. wealth were it not for the Bostonians, who undermine our trade with China in furs, of which they obtain large numbers on our American coasts. . . . I take the liberty, as a faithful servant of your Imperial Majesty, of declaring my opinion that it is very necessary to take a stronger hold of this country. It is certain that we shall leave it empty-handed, since from fifteen to twenty ships come here annually from Boston to trade."

Later in the year Resenoff visited New Archangel. He writes :—

"The Kolosh appear to be subdued, but for how long? Ibid., p. 451. They have been armed by the Bostonians with the best guns and pistols, and have even falconets. All along the Sound they have erected forts. The fierceness and treachery once exhibited by the natives have taught us the greatest caution."

The "Juno" was again at this place in 1806, Ibid., p. 454. and was purchased, together with her cargo, by Baranoff. Captain O'Cain arrived in the Ibid., pp. 478, 479. "Eclipse," and was intrusted with a cargo of furs for Japan, but the venture proved a failure, and the vessel was lost on the way back.

The names of four traders only on the north-west coast are known for this year. North-West Coast, pp. 324, 325.

1807. The "Juno" was dispatched by Resenoff, Alaska, p. 461. who had spent the winter at New Archangel, to the Californian coast for provisions for the support of the colony. The English ship, "Myrtle," Captain Barber, having arrived at

New Archangel, was purchased by Baranoff, together with her cargo.

Six north-west coast traders are known by name for this year.

1808. The American vessel "Mercury," Captain Ayres, obtained at Kadiak twenty-five bidarkas, and hunters for hunting and trading to the southward, on an arrangement similar to that already made with Captain O'Cain.

Four American traders are known to have been on the north-west coast in this and the following year.

1809. A conspiracy was formed among some of the Russian employés at Sitka or New Archangel, to kill Baranoff, but was frustrated.

1810. The Russian sloop of war, "Diana" visited Sitka, where the Commander was entertained by Baranoff, "together with his officers and the Commanders of several American vessels then in port." Shortly afterwards the American vessels "Enterprise" and "O'Cain" also arrived, and a considerable portion of the cargo of the former was purchased by Baranoff. The "Enterprise" was then dispatched to Canton with furs.

Golovin, the Commander of the "Diana," writes :—

"An American sailor, who was teaching English to the boys at Kadiak, without understanding Russian, a Prussian skipper of one of the Company's vessels, and a relative of Baranoff, who had picked up a few hundred English words, composed, previous to our arrival, the Diplomatic Corps of the Russian-American Company."

In 1810 and 1811, four vessels were engaged in hunting sea-otter under Russian contracts in this and in the following year.

1811. The "Enterprise" returned from China to Sitka, and was again dispatched to Canton. The Ross Colony, intended chiefly to provide agricultural products for use on the northern coast, was founded in California. After a struggling existence, in which seal and sea-otter hunting was combined with farming, this endeavour was eventually abandoned in 1841. Besides the four vessels above mentioned, five traders were seen on the southern part of the Alaskan coast, and others are known to have been engaged in trading and hunting in this year.

North-West
Coast,
pp. 323, 324.
Alaska,
pp. 479, 480.

North-West
Coast,
pp. 324, 325.

Alaska, p. 467.

Ibid., p. 470.

North-West
Coast, p. 325.

Ibid., p. 326.





1812. The American ship "Beaver" arrived at Sitka with a confidential agent of Astor on board. He disposed of his cargo to Baranoff, but was sent to the Pribyloff Islands for the fur-seal skins in which payment was made.

Between 1809 and this year, Baranoff made six additional contracts with vessels from the United States for hunting parties to the southward. He supplied Aleut hunters, and received a proportion of the skins obtained, chiefly sea-otter skins. *Alaska, p. 460.*

During the years 1812 to 1814 inclusive, the war between England and the United States practically stopped the trading on the north-west coast, which was at this time almost entirely in the hands of Americans. *North-West Coast, p. 329.*

1814. Captain Bennett, an American, sold two vessels and their cargoes to Baranoff, and was dispatched to the Pribyloff Islands for fur-seal skins in payment. He was afterwards wrecked, with his cargo, on the Sandwich Islands. In this year Lazaref, with two ships sent by the Russian Government, reached Sitka. He quarrelled with Baranoff, and eventually left abruptly on his return to Russia. *Alaska, p. 501. Ibid., pp. 504, 505.*

1815. In this year we hear of the "Isabel" being at Sitka. Dr. Shaffer, formerly with Lazaref, sailed in her as a passenger, with a mission to the Sandwich Islands.

1816. An expedition sailing from Kronstadt in the "Ruric," Captain Kotzebue, in the preceding year, reached Petropaulowski, and thereafter touched at St. Lawrence Island and explored Kotzebue Sound, to the north of Behring Strait. Kotzebue visited the Californian coast and the Sandwich Islands during the winter. Two American vessels are known to have visited the Russian establishments in this year. *North-West Coast, p. 335.*

1817. A second, but abortive, attempt at northern exploration was made by Kotzebue, who on this occasion only reached St. Lawrence Island.

An expedition, under Hagemeister, dispatched by the Russian Government in two vessels, reached Sitka. *Alaska, p. 510.*

1818. Hagemeister, having been instructed to that effect, superseded Baranoff. In the same year the Russian sloop of war "Kamchatka" arrived at Sitka, under command of Golovnin. Roquefeuil, a French naval officer, arrived at Sitka in a trading-vessel dispatched by a Bor- *Ibid., pp. 513-516. Ibid., pp. 532, 533.*

deaux merchant, and named the "Bordelais." He obtained Aleut hunters, and proceeded to the Prince of Wales' Archipelago, but there came disastrously into collision with the natives, and returned to Sitka, and thereafter sailed for San Francisco. Various attempts at exploration were also made by the Russians at about this time, but without great results.

Roquefeuil found two trading-vessels, one American and the other British, in Alaskan waters in this year.

1819. Hagemeister left Russian America for Kronstadt on the "Kutusof." At this time it is said that—

"the Americans absorbed most of the trade, bartering fire-arms and rum with the Kolosh in return for skins, of which they obtained about 8,000 a-year, while the Russians tried in vain to compete with them."

The period had now arrived at which the twenty years' Charter of the Russian-American Company was about to expire, and, aware of the fact that a renewal of the Charter would be asked for, the Russian Government instructed Golovnin to inquire as to the nature of its operations. His report was not favourable. He writes :—

"Three things are wanting in the organization of the Company's colonies : a clearer definition of the various officers, a distinction of rank, and a regular uniform, so that foreigners visiting these parts may see something indicating the existence of forts and troops belonging to the Russian sceptre—something resembling a regular garrison. At present they can come to no other conclusion than that these stations are but temporary fortifications erected by hunters as a defence against savages."

1820. In this year, and in the previous year, the names of four trading-vessels operating on the north-west coast are known, but the records are possibly imperfect.

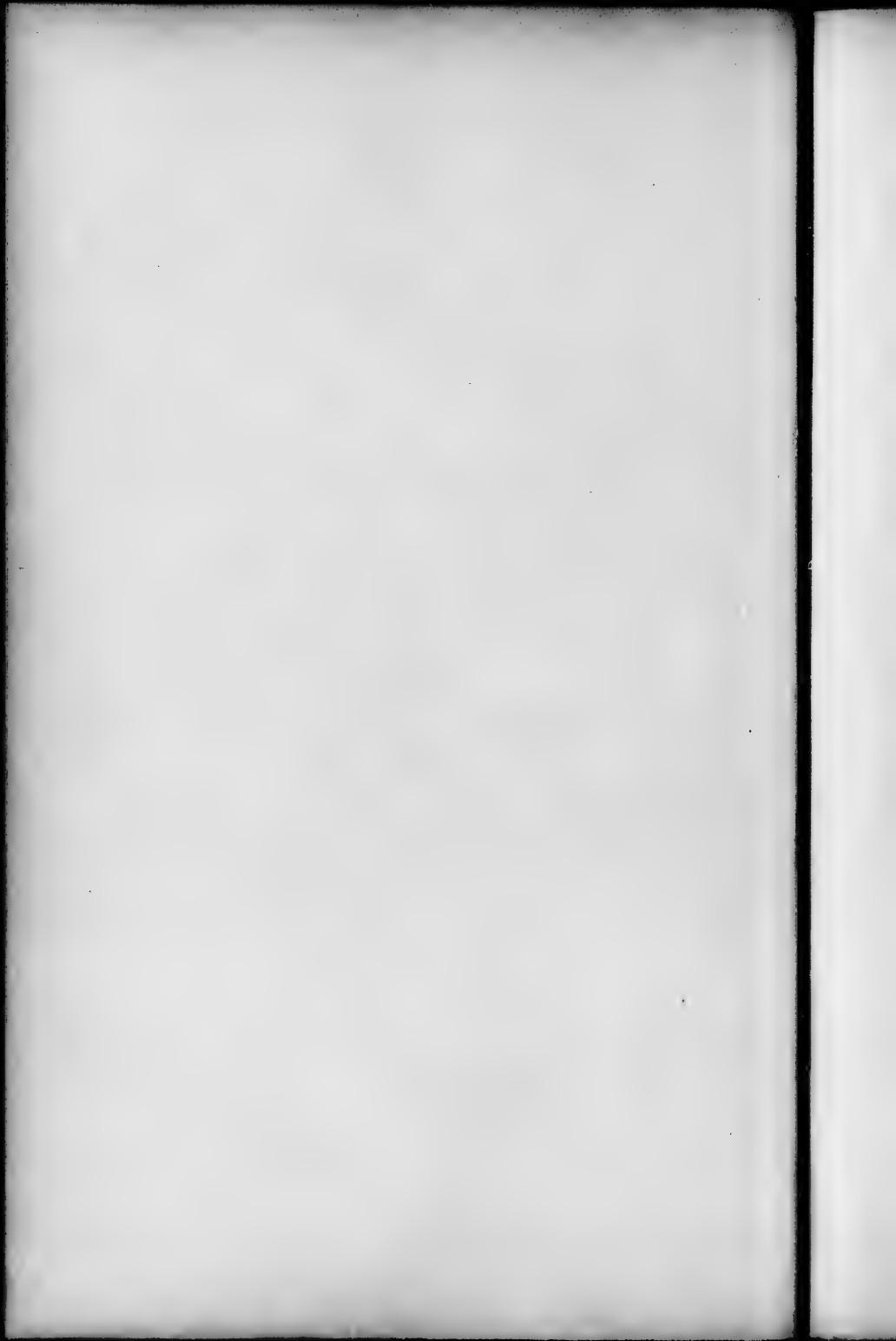
North-West
Coast, p. 338.

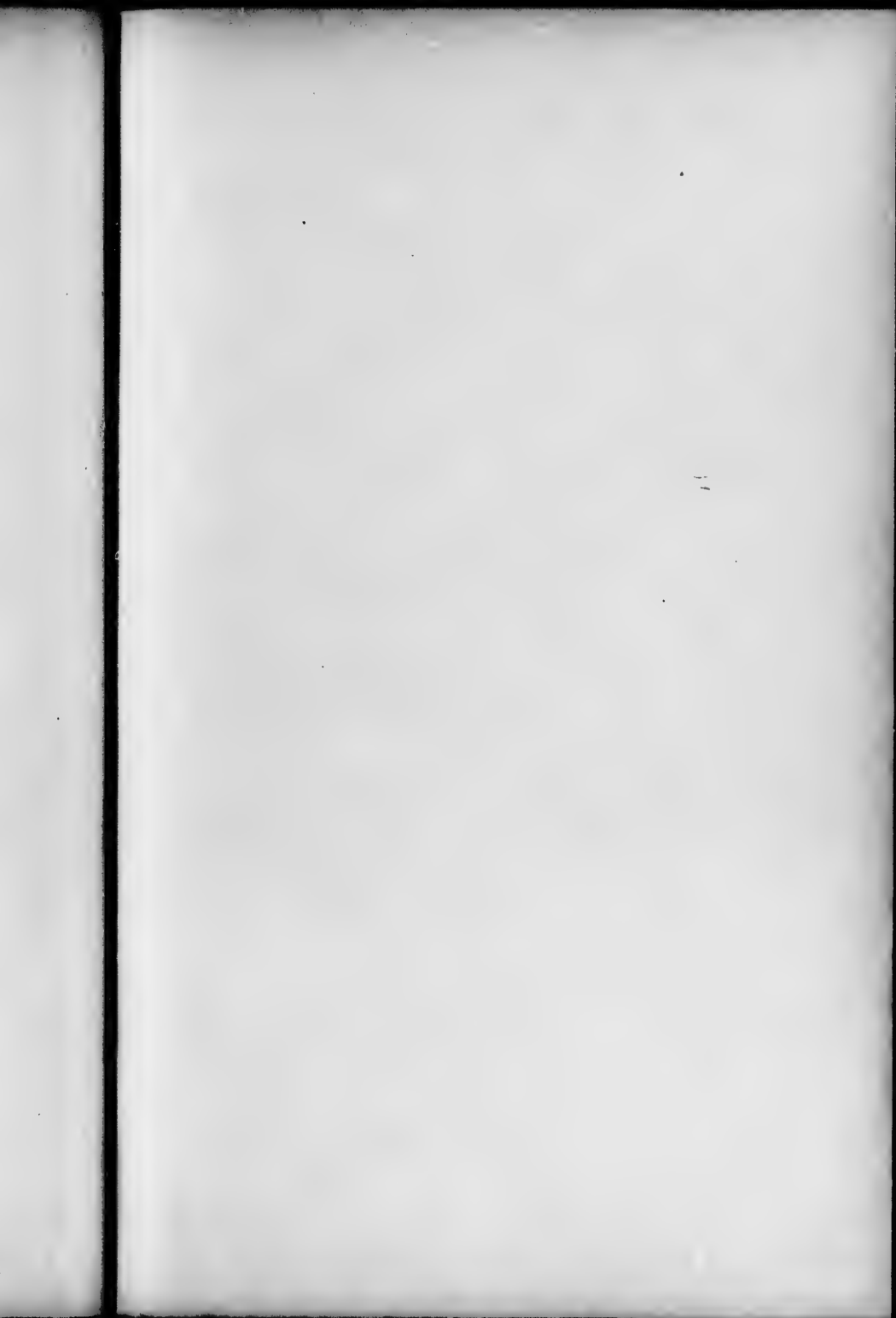
Alaska,
pp. 336, 337.

Alaska, p. 538.

Ibid., p. 531.

North-West
Coast, p. 340.





0.000

W

CC

E

2020

Printed for the use of the Foreign Office. September 1873.

CONFIDENTIAL

UNITED STATES.

CORRESPONDENCE

RESPECTING

EXTENT OF MARITIME JURISDICTION

AS CLAIMED AT VARIOUS TIMES BY THE UNITED STATES.

1793 TO 1848.

LIST OF PAPERS.

No.			Page
1.	Mr. Jefferson to M. Ternaant	May 15, 1793	1
	One Inclosure.		
2.	Mr. Hammond to Lord Grenville	May 17, —	4
	Seven Inclosures.		
3.	M. Genet to Mr. Jefferson	May 27, —	8
4.	Mr. Hammond to Lord Grenville	(No. 15) June 10, —	9
5.	Mr. Jefferson to M. Genet	November 8, —	9
6.	Mr. Hammond to Lord Grenville	July 22, 1794	10
	Two Inclosures.		
7.	Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States of America, signed at London	November 19, —	11
8.	Mr. Madison to Messrs. Monroe and Pinkney	May 17, 1806	11
9.	Lord Holland and Lord Auckland to Lord Howick	(No. 3) November 14, —	12
10.	Lord Holland and Lord Auckland to Lord Howick	November 14, —	12
11.	The King's Advocate to Lord Howick	November 17, —	14
12.	Messrs. Monroe and Pinkney to Lord Holland and Lord Auckland	November 20, —	16
13.	Lord Holland and Lord Auckland to Lord Howick	November 20, —	16
	One Inclosure.		
14.	Messrs. Monroe and Pinkney to Mr. Madison	January 8, 1807	17
	One Inclosure.		
15.	Viscount Palmerston to Mr. Crampton	(No. 18) April 14, 1848	18
16.	Mr. Crampton to Viscount Palmerston	(No. 54) April 30, —	19
	One Inclosure.		
17.	Mr. Crampton to Viscount Palmerston	(No. 105) August 28, —	19
	One Inclosure.		
18.	Mr. Addington to the Secretary to the Admiralty	October 6, —	20

(Ext)

out o
expla
vind
with
they

withi
consi
juris
all p
vesse
State
the b
State
will
and l
liber

thes
the d
sures
at w

Secre

UNITED STATES.

Extent of Maritime Jurisdiction as claimed at
various times by the United States.

No. 1.

Mr. Jefferson to M. Ternant.

(Extract.)

Philadelphia, May 15, 1793.

HAVING received several memorials from the British Minister on subjects arising out of the present war, I take the liberty of inclosing them to you, and shall add an explanation of the determinations of the Government thereon. These will serve to vindicate the principles on which it is meant to proceed, and which are to be applied with impartiality to the proceedings of both parties. They will form, therefore, as far as they go, a rule of action for them and for us.

The capture of the British ship "Grange," by the French frigate l'Embuscade," within the Delaware, has been the subject of a former letter to you. On full and mature consideration, the Government deems the capture to have been unquestionably within its jurisdiction; and that, according to the rules of neutrality, and the protection it owes to all persons while within its limits, it is bound to see that the crew be liberated, and the vessel and cargo restored to their former owners. The Attorney-General of the United States has made a statement of the grounds of this determination, a copy of which I have the honour to inclose you. I am, in consequence, charged by the President of the United States to express to you his expectation, and, at the same time, his confidence, that you will be pleased to take immediate and effectual measures for having the ship "Grange" and her cargo restored to the British owners, and the persons taken on board her set at liberty.

I am persuaded, Sir, you will be sensible, on mature consideration, that, in forming these determinations, the Government of the United States has listened to nothing but the dictates of immutable justice; they consider the rigorous exercise of that virtue, as the surest means of preserving perfect harmony between the United States and the Powers at war.

(Signed) TH. JEFFERSON.

Inclosure in No. 1.

Report.

THE Attorney-General of the United States has the honour of submitting to the Secretary of State his opinion concerning the Seizure of the Ship "Grange."

The essential facts are—

That the River Delaware takes its rise within the limits of the United States;

[557]

That, in the whole of its descent to the Atlantic Ocean, it is covered on each side by the territory of the United States;

That, from tide water, to the distance of about sixty miles from the Atlantic Ocean, it is called the River Delaware;

That, at this distance from the sea, it widens and assumes the name of the Bay of Delaware, which it retains to the mouth;

That its mouth is formed by the capes Henlopen and May; the former belonging to the State of Delaware, in property and jurisdiction, the latter to the State of New Jersey;

That the Delaware does not lead from the sea to the dominions of any foreign nation;

That, from the establishment of the British provinces on the banks of the Delaware to the American Revolution, it was deemed the peculiar navigation of the British empire;

That, by the Treaty of Paris, on the 3rd day of September, 1783, his Britannic Majesty relinquished, with the privy of France, the sovereignty of those provinces, as well as of the other provinces and colonies;

And that the Grange was arrested in the Delaware, within the capes, before she had reached the sea, after her departure from the port of Philadelphia.

It is a principle, firm in reason, supported by the civilians, and tacitly approved in the document transmitted by the French Minister, that, to attack an enemy in a neutral territory, is absolutely unlawful.

Hence the inquiry is reduced to this simple form, whether the place of seizure was in the territory of the United States?

From a question originating under the foregoing circumstances, is obviously and properly excluded every consideration of a dominion over the sea. The solidity of our neutral right does not depend, in this case, on any of the various distances claimed on that element by different nations possessing the neighbouring shore; but if it did, the field would probably be found more extensive, and more favourable to our demand, than is supposed by the document above referred to. For the necessary or natural law of nations, unchanged as it is, in this instance, by any compact or other obligation of the United States, will, perhaps, when combined with the Treaty of Paris in 1783, justify us in attaching to our coasts an extent into the sea beyond the reach of cannon shot.

In like manner is excluded every consideration, how far the spot of seizure was capable of being defended by the United States. For, although it will not be conceded that this could not be done, yet will it rather appear, that the mutual rights of the States of New Jersey and Delaware, up to the middle of the river, supersede the necessity of such an investigation.

No; the corner stone of our claim is, that the United States are proprietors of the lands on both sides of the Delaware, from its head to its entrance into the sea.

The high ocean, in general, it is true, is unsusceptible of becoming property. It is a gift of nature, manifestly destined for the use of all mankind; inexhaustible in its benefits; not admitting metes and bounds. But rivers may be appropriated, because the reverse is their situation. Were they open to all the world, they would prove the inlets of perpetual disturbance and discord; would soon be rendered barren by the number of those who would share in their products; and moreover may be defined.

"A river, considered merely as such, is the property of the people through whose lands it flows, or of him under whose jurisdiction that people is."—Grot. b. 2, c. 2, s. 12.

"Rivers might be held in property; though neither where they rise, nor where they discharge themselves, be within our territory, but they join to both, or the sea. It is sufficient for us that the larger part of water, that is, the sides, is shut up in our banks, and that the river, in respect of our land, is itself small and insignificant."—Grot. b. 2, c. 3, s. 7; and Barbeyrac, in his note, subjoins that neither of those is necessary.

"Rivers may be the property of whole States."—Puff. b. 3, c. 3, s. 4.

"To render a thing capable of being appropriated, it is not strictly necessary that we should enclose it, or be able to enclose it, within artificial bounds, or such as are different from its own substance; it is sufficient, if the compass and extent of it can be any way determined. And therefore Grotius hath given himself a needless trouble, when, to prove rivers capable of property, he weth this argument, that, although they are bounded by the land at neither end, but united to the other rivers or the sea, yet it is enough that the greater part of them, that is their sides, are enclosed."—Puff. b. 4, c. 5, s. 3.

"When a nation takes possession of a country in order to settle there, it possesses everything included in it, as lands, lakes, rivers," &c.—Vattel, b. 1, c. 22, s. 266.

forme
autho
affect
this
accur
"A r
no ot
absol
withi
nation
to a
the p
of the
often
times
man
spring
by th
varia
tigu
tinue
in th
migh
above
the s
some
lawfu
withi
first
supp
c. 5,
virtu
conte
plut
de m
victo
by th
not t
foreign
it, as
juris
passe
water
prehe
Cape
the
Unit
proc
with
will
mout
294th
mere
much

To this list might be added Bynkershoek and Selden. But the dissertation of the former, *de dominio maris*, cannot be quoted with advantage in detachment; and the authority of the latter, on this head, may, in the judgment of some, partake too much of affection for the hypothesis of *mare clausum*. As Selden, however, sinks in influence on this question, so must Grotius rise, who contended for the *mare liberum*; and his accurate commentator, Rutherford, confirms his principles in the following passage:—"A nation, by settling upon any tract of land, which at the time of such settlement had no other owner, acquires, in respect of all other nations, an exclusive right of full or absolute property, not only in the land, but in the waters likewise that are included within the land, such as rivers, pools, creeks, or bays. The absolute property of a nation, in what it has thus seized upon, is its right of territory."—2 Ruth. b. 2, c. 9, s. 6.

Congress, too, have acted on these ideas, when, in their collection laws, they ascribe to a State the rivers wholly within that State.

It would seem, however, that the spot of seizure is attempted to be withdrawn from the protection of these respectable authorities, as being in the Bay of Delaware, instead of the River Delaware.

Who can seriously doubt the identity of the River and Bay of Delaware? How often are different portions of the same stream denominated differently? This is sometimes accidental; sometimes for no other purpose than to assist the intercourse between man and man, by easy distinctions of space. Are not this river and this bay fed by the springs from the land, and the same tides from the ocean? Are not both doubly flanked by the territory of the United States? Have any local laws, at any time, provided variable arrangements for the river and the bay? Has not the jurisdiction of the contiguous States been exercised equally on both?

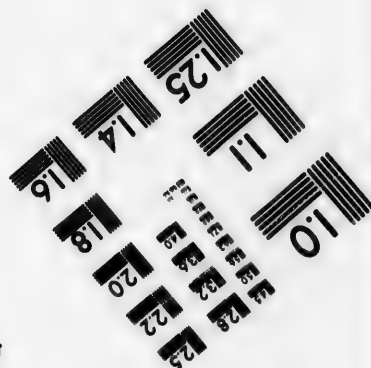
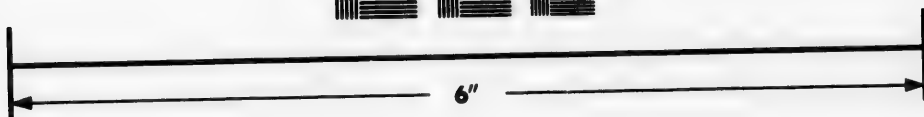
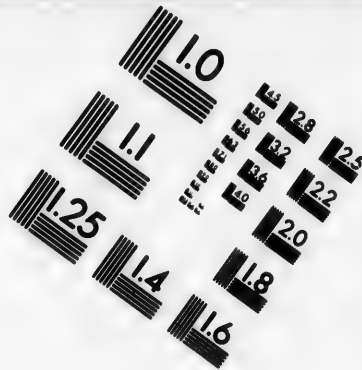
But suppose that the river was dried up, and the bay alone remained, Grotius continues the argument of the 7th section, of the 3rd chapter, of the 2nd book above cited, in the following words:—

"By this instance it seems to appear that the property and dominion of the sea might belong to him, who is in possession of the lands on both sides; though it be open above, as a gulf, or above and below as a strait; provided it is not so great a part of the sea that, when compared with the lands on both sides, it cannot be supposed to be some part of them. And now, what is thus lawful to one king or people may be also lawful to two or three, if they have a mind to take possession of a sea, thus enclosed within their lands; for it is in this manner that a river which separates two nations has first been possessed by both, and then divided.

"The gulfs and channels, or arms of the sea, are, according to the regular course supposed to belong to the people with whose lands they are encompassed."—Puff. b. 4, c. 5, s. 8.

Valin, in b. 5, tit. 1, p. 685, of his commentary on the marine ordonnance of France, virtually acknowledges that particular seas may be appropriated. After reviewing the contest between Grotius and Selden, he says, "S'il (Selden) s'en fût donc tenu là, ou plutôt, s'il eût distingué l'océan des mers particulières, et même dans l'océan, l'étendue de mer, qui doit être censée appartenir aux Souverains des côtes, qui en sont baignées, sa victoire eût été complète."

These remarks may be enforced by asking, what nation can be injured in its rights by the Delaware being appropriated to the United States? And to what degree may not the United States be injured, on the contrary ground? It communicates with no foreign dominion; no foreign nation has ever before exacted a community of right in it, as if it were a main sea; under the former and present Governments, the exclusive jurisdiction has been asserted; by the very first collection law of the United States, passed in 1789, the county of Cape May, which includes Cape May itself, and all the waters thereof, theretofore within the jurisdiction of the State of New Jersey, are comprehended in the district of Bridgetown; the whole of the State of Delaware, reaching to Cape Henlopen, is made one district. Nay, unless these positions can be maintained, the bay of Chesapeake, which in the same law is so fully assumed to be within the United States, and which for the length of the Virginia territory, is subject to the process of several counties to any extent, will become a rendezvous to all the world, without any possible control from the United States. Nor will the evil stop here. It will require but another short link in the process of reasoning to disappropriate the mouths of some of our most important rivers. If, as Vattel inclines to think in the 294th section of his first book, the Romans were free to appropriate the Mediterranean, merely because they secured by one single stroke the immense range of their coast, how much stronger must the vindication of the United States be, should they adopt



Photographic Sciences Corporation

**23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503**

128
132
125
122
120
118

10
01

maxims for prohibiting foreigners from gaining, without permission, access into the heart of their country.

This inquiry might be enlarged by a minute discussion of the practice of foreign nations in such circumstances. But I pass it by, because the United States, in the commencement of their career, ought not to be precipitate in declaring their approbation of any usages (the precise facts concerning which we may not thoroughly understand), until those usages shall have grown into principles, and are incorporated into the Law of Nations, and because no usage has ever been accepted which shakes the foregoing principles.

The conclusion then is, that the "Grange" has been seized on neutral ground. If this be admitted, the duty arising from the illegal act is restitution.

(Signed) EDMUND RANDOLPH.

No. 2.

Mr. Hammond to Lord Grenville.

(Extract.)

Philadelphia, May 17, 1793.

ON the 9th of last month, the French frigate the "Embuscade" arrived from Rochefort at Charleston. After having landed Mr. Genét at that place, the frigate proceeded on a cruise to the northward of Charleston, in the course of which she captured a small English brig off the Capes of Delaware, and within two or three days afterwards, the British ship "Grange," as she was lying at anchor within the Bay of Delaware. As soon as I learnt that the "Embuscade" was coming up to Philadelphia, and that it was probable she might continue here some days, I thought it my duty to lose no time in transmitting intelligence of it to the officer commanding His Majesty's vessels at Halifax. I therefore, on the 27th ultimo, sent a letter for that officer (of which I inclose a copy) by express to His Majesty's Consul at New York, and it was on the next day forwarded to Halifax by a sloop hired for the purpose.

In the meantime, the capture of the ship "Grange," under all its circumstances, appeared to me so flagrant a violation of the rights of neutral nations as determined me to bring the validity of it to an immediate issue, and thereby endeavour to ascertain the real views of the Government by the manner in which it might regard this aggression on its territory. As soon, therefore, as I could procure the necessary evidence, I presented, on the 2nd instant, a memorial on the transaction, accompanied by the depositions which substantiated it. But being extremely solicitous to press an early decision, I presented, on the 8th instant, another memorial on the same subject.

Last night I received from Mr. Jefferson the inclosed answer to my several memorials. Your Lordship will, I hope, be of opinion that through it the Government of the United States is committed, upon the principle of all the important objects submitted to their attention, as completely as could be expected, and that the language in which their determination is expressed, is as unequivocal as could be desired. I know that this answer has been three days under consideration; I must consequently conclude that the sentiments it conveys are the result of the most mature and sedate deliberation. With respect to the mode of carrying into active effect the determination of this Government on two of the most essential points, I learn that a formal requisition has been made in the name of the United States to Mr. Jernant, the Minister of France, that the ship "Grange" shall be immediately restored and her crew liberated. A refusal on the part of the French captain to obey this requisition can be supported by force alone, and in that case must be considered as an act of offensive hostility against the United States. If the vessel be restored, I have directed the agent for the owners, and shall recommend to the master and crew to commence actions respectively against the French captain for damages arising from the detention, and I have been assured by an efficient member of this Administration that the law must and will be allowed freely to operate.

Inclosure 1 in No. 2.

Mr. Hammond to the Officer commanding His Majesty's Ships of War stationed at Halifax.

Sir,

Philadelphia, April 27, 1793.

I THINK it my duty to communicate to you by the most expeditious means in my power, the following intelligence, and it will remain with you to determine on the measures that may appear the most efficacious for giving immediate protection to the commerce and property of His Majesty's subjects in these seas.

On the 9th instant, the French frigate "Embuscade" arrived at Charleston from Rochefort in France, having on board M. Genet, the new French Minister to the United States. In the course of her voyage to Charleston, the "Embuscade" captured two British brigs. After remaining some days at Charleston, she sailed from thence, and on Wednesday evening last, the 24th instant, appeared off Cape Henlopen, near to which she took the British brig "Little Sarah," from this port to Jamaica. On the following morning, she captured in Delaware Bay the British ship "Grange," bound to Liverpool. The "Embuscade" is now at Chester, in the Delaware, about fifteen miles from hence, and is expected here every hour with her prizes.

The "Embuscade" is pierced for thirty-six guns, but mounts thirty-two only. She is commanded by a Captain Bompert, and carries 250 men. Exclusive of this vessel, a pilot was about a week ago put on board of another French armed ship, but of what force I have not yet been able to ascertain. It is also currently reported here that a third French armed vessel is now hovering upon these coasts.

As the captures made in the Delaware are unquestionably illegal, being contrary to the Law of Nations, I shall, as soon as the prizes arrive here, demand their restoration. The discussions consequent upon this demand will most probably detain the "Embuscade" here for some days at least. As the captain's instructions from the French Executive Council are to cruise along the American coasts, there can, I think, exist little doubt that she will continue in the pursuit of that object for some time longer, previous to either her return to France or to her proceeding to the West Indies.

I have, &c.

(Signed)

GEO. HAMMOND.

Inclosure 2 in No. 2.

Mr. Hammond to Mr. Jefferson.

Philadelphia, May 3, 1793.

THE Undersigned, His Britannic Majesty's Minister Plenipotentiary to the United States of America, has the honour of submitting to the Secretary of State the following particulars relative to the capture, in the Bay of Delaware, of the British ship "Grange," commanded by Edward Hutchinson, and bound from this port to Liverpool.

On Thursday, the 25th of April last, at 11 o'clock a.m., as the ship "Grange," having a Delaware pilot on board, was lying at anchor near the buoy of the Brown, in the Bay of Delaware, a frigate appeared off the Capes, under British colours, which she continued to display until she approached within half a mile of the "Grange," at which time they were struck, the colours of France hoisted in their place, and the frigate proved to be the French frigate "Embuscade," Bompert commander. On the "Grange's" showing the colours of her nation, the frigate fired a shot over her, as a signal to surrender, which Captain Hutchinson immediately obeyed. The captain of the frigate then sent his boat, with thirty or forty men, who took possession of the "Grange" as a prize to the French Republic, and sent the crew prisoners on board of the frigate. The "Grange" arrived in the harbour of this city yesterday evening, but her crew still remain in confinement on board of the "Embuscade."

From this statement, corroborated by the annexed affidavit of the pilot, and the affirmations of two respectable passengers on board of the "Grange," it is manifest that the French frigate "Embuscade" captured the British ship "Grange," as she was lying at anchor within the territory and jurisdiction of the United States, in direct violation of the Law of Nations. The Undersigned, therefore, can entertain no doubt that the Executive Government of the United States will consider this infringement on its neutrality, and this aggression, on its jurisdiction, as a sufficient ground of compliance

with the requisition which the Undersigned has now the honour of formally and respectfully making, that the Executive Government of the United States will adopt such measures as to its wisdom may appear the most efficacious, for procuring the immediate restoration to the agent for the owners residing in this city, of the British ship "Grange," and for obtaining the liberation of her crew, now illegally and forcibly imprisoned on board of the French frigate "l'Embuscade."

I have, &c.
(Signed) GEO. HAMMOND.

Inclosure 3 in No. 2.

Deposition of Gilbert MacRaken.

Pennsylvania.

GILBERT MACRAKEN, one of the pilots belonging to the river and bay of Delaware, residing at Lewis Town, in the State of Delaware, being duly sworn, deponeth and saith, that on or about the 18th day of April now last past, he was employed by Edward Hutchinson, captain of the ship called the "Grange," to take charge of her, and conduct her from the port of Philadelphia, where she then was, out to sea; that she gradually dropped down the river, with the captain, crew, several passengers, and this deponent on board, until she reached Reedy Island, where she lay for some time wind bound, and during their continuance there they were informed by a pilot that a French 20-gun ship was on the coast, and had taken a pilot, intending for Philadelphia; that this information seemed to deter the captain for some time from endeavouring to get out to sea, but he at length concluded to proceed to the anchorage within Cape Henlopen, and await there for a fair wind to carry him clear off the coast; that at about five o'clock in the morning of the 25th day of the same month, being at anchor in about thirteen fathom water, within about a mile to the westward of the buoy of the Brown, with the lighthouse on Cape Henlopen in view, at the distance of about twelve miles, and bearing south by east half east from thence, and Cape May bearing to the southward of east, a large ship hove in sight, standing up the bay, under English colours; that when she got within about two miles of the "Grange," which continued at anchor as aforesaid, the said large ship hauled down her colours, and continued her course up the bay, until she arrived within hail of the "Grange," and then hoisted French colours; that upon this Captain Hutchinson hoisted English colours, and immediately thereupon a ball discharged from said large ship passed over the "Grange," that the "Grange's" colours were then struck, and about thirty people coming on board her in boats from the large ship, declared her to be a prize to the frigate "Embuscade" and took possession of her accordingly; that the "Grange's" crew, all but the steward, were sent on board the frigate, and the captain of the "Grange" followed in the evening, with the officers of the frigate, except a prize master, who remained on board, with a number of hands; that the frigate proceeded up the bay and river with the "Grange" as a prize, and the latter is now at the port of Philadelphia, in the possession of a prize master, and several hands belonging to the frigate.

(Signed) GILBERT MACRAKEN.

City of Philadelphia.

The 2nd day of May, 1793, before me, Matthew Clarkson, Mayor of the said city, personally appeared Gilbert MacRaken, and made oath that the several matters stated in the foregoing writing are true.

In testimony whereof I have caused the seal of the said city to be hereunto affixed.

(Signed) MATTH. CLARKSON, Mayor.

Inclosure 4 in No. 2.

Affirmation of Joshua Sutcliff.

ON the 18th April, 1793, the ship "Grange," Captain Hutchinson, bound to Liverpool, sailed from Philadelphia, the affirmant, Jos'us Sutcliff, being one of the passengers.

On the 19th the affirmant with the other passengers went on board at Chester, and the "Grange" continued to drop down the river. On the 25th she lay at an anchor near the buoy of the Brown, a Sand Bank in the bay of the river Delaware, the pilot being still on board. About 11 o'clock A.M., it being then flood tide, a frigate appeared in sight coming in from sea under English colours, and brought to near the "Grange." The frigate then hoisted French colours, and the "Grange," which till then had no colours flying, hoisted English colours. The frigate then fired a gun over the "Grange," upon which the English colours were hauled down and the captain of the frigate sent his boat on board with thirty or forty men, who took possession of the "Grange" as a prize to the French Republic, and sent all the officers and crew, except the steward, on board the frigate. From the French officers the captain and passengers of the "Grange" learned that the frigate was called the "Embuscade," commanded by Citizen Bompert. The "Grange" had not been farther down the bay than the Brown, where she was at anchor, and the captain, officers, and passengers believed themselves in safety in neutral ground and within the protection of the United States; and this deponent further declares that no alteration had been made in the name of the ship on the stern, as he understands had been reported, or in her certificate of register.

(Signed) JOSHUA SUTCLIFF.

City of Philadelphia.

The 2nd day of May, 1793, before me Matthew Clarkson, Mayor of the said city, personally appeared Joshua Sutcliff, and upon his solemn affirmation, according to law, did declare and say that the several matters stated in the within writing are true to the best of his knowledge and belief.

In testimony whereof I have caused the seal of the said city to be hereunto affixed.

(Signed) MATTH. CLARKSON, Mayor.

Inclosure 5 in No. 2.

Declaration of George Dillwyn.

GEORGE DILLWYN, of Burlington, New Jersey, being requested to testify what he recollects touching the capture of the ship "Grange." Edward Hutchinson master, bound to Liverpool, declares that having agreed for the passage of himself and wife in the said ship, they embarked at Chester the 19th ultimo, and gradually dropped down the river to Reedy Island, where being for some time wind-bound, they heard that a French frigate was on the coast, and had taken a Delaware pilot on board intending for Philadelphia; that this intelligence appeared to deter Captain Hutchinson from attempting to get out to sea so soon as he otherwise might have done; but that he at length concluded to proceed to the anchorage within Cape Henlopen, and then wait for a fair wind to carry him clear off the coast. That being here at anchor within about a mile of the buoy of the Brown with the lighthouse of Cape Henlopen, and Cape May in view, at about 10 o'clock A.M. of the 25th ultimo a large ship bore down upon them, and when at the distance of about a quarter of a mile hoisted a French ensign. That upon Captain Hutchinson's displaying an English one, a ball was discharged from the frigate which passed over their heads. That the "Grange's" colours were then struck, and a number of men coming on board informed them that she was prize to the "Embuscade," a French frigate of forty guns. That the "Grange's" crew, all but the steward, were soon after sent on board the frigate, and the captain followed with the officers of the frigate in the evening. That the cabin passengers, four in number, were treated with civility, and allowed to remain in the "Grange," where they occupied the cabin unmolested till 28th, when by special permission obtained from the captain of the frigate, they were permitted to leave the vessel and take their stores on shore with them. The deponent further saith, that no alteration was made in the letters on the stern of the "Grange," nor did he discover that Captain Hutchinson had provided any false papers whereby to impose her on strangers as an American vessel.

(Signed) GEORGE DILLWYN.

Inclosure 6 in No. 2.

Mr. Hammond to Mr. Jefferson.

Philadelphia, May 8, 1793.

THE Undersigned, His Britannic Majesty's Minister Plenipotentiary to the United States of America, requests permission to recall to the attention of the Secretary of State the memorial which was presented to him on the 2nd instant relative to the capture of the British ship "Grange" by the French frigate the "Embuscade." The subject of that memorial being merely a question of fact, the Undersigned entertained hopes that the confirmation or contradiction of the testimony he adduced might have been so easily procured as to have enabled the Executive Government of the United States before this time to have formed some determination upon it. But having been disappointed in these hopes, he ventures to indulge the expectation that the delay may not be of much longer duration, and that he may receive an early answer on a matter in which he cannot but conceive the two countries deeply interested. Indeed he trusts that this renewal of his solicitation cannot be regarded as too importunate when it is considered that a British ship has been a week in the harbour of Philadelphia in a state of arrest and detention under a capture which he presumes to be illegal, and in consequence of which a number of His Majesty's subjects remain in a condition of rigorous and unjust confinement. The Undersigned is farther impelled to desire as speedy an answer as may be convenient, by the consideration of his great anxiety to transmit to the King's Government in England the final resolution of the Executive Government of the United States on this important point, on the decision of which is to rest the degree of future security and protection which vessels belonging to the subjects of the King his Master, and of the other Powers now engaged in war with France, may expect to receive in the ports and harbours of the United States.

I have, &c.
(Signed) GEO. HAMMOND.

Inclosure 7 in No. 2.

Mr. Jefferson to Mr. Hammond.

Philadelphia, May 15, 1793.

(Extract.)

YOUR several memorials of the 8th instant have been laid before the President, as had been that of the 2nd, as soon as received. They have been considered, with all the attention and the impartiality which a firm determination could inspire, to do what is equal and right between all the belligerent Powers.

The capture of the British ship "Grange" by the French frigate "l'Embuscade", has on enquiry been found to have taken place within the Bay of Delaware and jurisdiction of the United States, as stated in your memorial of the 2nd instant, the Government is therefore taking measures for the liberation of the crew and restitution of the ship and cargo.

No. 3.

M. Genet to Mr. Jefferson.

*Philadelphia, May 27, 1793, the 2nd year of the
Republic of France.*

(Translation.)
(Extract.)

THE last point which remains to be spoken of, Sir, is the capture of the English ship "Grange" by the "Embuscade" frigate.

The learned conclusions of the Attorney-General of the United States, and the deliberations of the American Government, have been on this subject the rule of my conduct. I have caused the prize to be given up; and, although of considerable value, my brave brethren, the seamen of the "Embuscade," have readily concurred in a measure which I represented to them as a proper mean to convince the American Government of our deference and of our friendship.

(Signed) GENET.

No. 4.

Mr. Hammond to Lord Grenville.(No. 15.)
(Extract.)*Philadelphia, June 10, 1793.*

I HAVE now the satisfaction of informing your Lordship that the ship "Grange" of Liverpool, which, as I mentioned in my last, had been captured within the Bay of Delaware by the French frigate the "Embuscade," has been restored to the agent for the owners residing in this city. The restitution was delayed for some days under different frivolous pretences by Mr. Genet and the commander of the frigate, but they were at length under the necessity of complying with the repeated requisitions of this Government. I recommended to the agent and master of the "Grange," immediately after the recovery of the vessel, to endeavour to obtain by process of law some compensation for the damages resulting from the detention (and the confinement of the crew) of the ship. My recommendations were, however, ineffectual, as in consequence of some menaces which had been thrown out by the sailors of the frigate, they did not deem it consistent with attention to their personal safety to pursue the proper legal measures for the purpose.

No. 5.

*Mr. Jefferson to M. Genet.**Germantown, November 8, 1793.*

Sir,

I HAVE now to acknowledge and answer your letter of September 13, wherein you desire that we may define the extent of the line of territorial protection on the coasts of the United States, observing that Governments and Jurisconsults have different views on this subject.

It is certain that, heretofore, they have been much divided in opinion as to the distance from their sea coasts to which they might reasonably claim a right of prohibiting the commitment of hostilities. The greatest distance, to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by any nation whatever, is the utmost range of a cannon ball, usually stated at one sea-league. Some intermediate distances have also been insisted on, and that of three sea-leagues has some authority in its favour. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation as any nation whatever. Not proposing, however, at this time, and without a respectful and friendly communication with the Powers interested in this navigation, to fix on the distance to which we may ultimately insist on the right of protection, the President gives instructions to the Officers, acting under his authority, to consider those heretofore given them as restrained for the present to the distance of one sea-league, or three geographical miles from the sea shores. This distance can admit of no opposition, as it is recognised by Treaties between some of the powers with whom we are connected in commerce and navigation, and is as little or less than is claimed by any of them on their own coasts.

Further occasions will be taken to enter into explanations with them, as to the ulterior extent to which we may reasonably carry our jurisdiction. For that of the rivers and bays of the United States, the laws of the several States are understood to have made provision, and they are, moreover, as being landlocked, within the body of the United States.

Examining, by this rule, the case of the British brig "Fanny," taken on the 8th of May last, it appears from the evidence that the capture was made four or five miles from the land, and consequently without the line provisionally adopted by the President, as before-mentioned.

I have, &c.
(Signed) TH. JEFFERSON.

No. 6.

Mr. Hammond to Lord Grenville.

(Extract.)

Philadelphia, July 28, 1794.

THE letter of Mr. Jefferson (Inclosure 1) establishes provisionally the distance from the sea shore of the United States, in which their territorial protection shall be exercised, at one sea-league. Though this is the most contracted of the different distances which Mr. Jefferson cites, yet as its operation will apply equally to all the belligerent powers, I thought it proper in my answer to acquiesce in the regulation without any comment.

(Signed)

GEO. HAMMOND.

Inclosure 1 in No. 3.

Mr. Jefferson to Mr. Hammond.

Sir,

Germantown, November 8, 1793.

THE President of the United States, thinking that before it shall be finally decided to what distance from our sea shores the territorial protection of the United States shall be exercised, it will be proper to enter into friendly conferences and explanations with the powers chiefly interested in the navigation of the seas on our coasts, and relying that convenient occasions may be taken for these hereafter, finds it necessary in the mean time to fix provisionally on some distance for the present government of these questions. You are sensible that very different opinions and claims have been heretofore advanced on this subject. The greatest distance to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by any nation whatever is the utmost range of a cannon ball, usually stated at one sea league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favour. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation whatever. Reserving, however, the ultimate extent of this for future deliberation, the President gives instructions to the officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the sea shores. This distance can admit of no opposition, as it is recognized by treaties between some of the Powers with whom we are connected in commerce and navigation, and is as little or less than is claimed by any of them on their own coasts.

For the jurisdiction of the rivers and bays of the United States, the laws of the several States are understood to have made provision; and they are moreover, as being land locked, within the body of the United States.

Examining by this rule the case of the British brig "Fauny," taken on the 8th of May last, it appears from the evidence that the capture was made four or five miles from the land, and consequently without the line provisionally adopted by the President as before mentioned.

I have, &c.

(Signed)

TH. JEFFERSON.

Inclosure 2 in No. 6.

Mr. Hammond to Mr. Jefferson.

Sir,

Lansdown, November 22, 1793.

I HAVE the honour of acknowledging the receipt of your letter of the 8th instant relative to the distance from the sea shore in which the territorial protection of the United States shall be exercised.

I shall be at all times ready to enter into any friendly conferences and explanations

upon this subject, and in the mean time it becomes my duty to acquiesce in any regulations which the Government of the United States may judge proper to establish with regard to the extent of its own jurisdiction.

I have, &c.
(Signed) GEO. HAMMOND.

No. 7.

Extract from Article XXV. of the Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States of America, signed at London, November 19, 1794.

NEITHER of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon shot of the coast, nor in any of the bays, ports or rivers of their territories, by ships of war or others having commission from any Prince, Republic or State whatever. But in case it should so happen, the party whose territorial rights shall thus have been violated shall use his utmost endeavours to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

No. 8.

Mr. Madison to Messrs. Monroe and Pinkney.

May 17, 1806.

(Extract.)

THERE remains, as an object of great importance, some adequate provision against the insults or injuries committed by British cruisers in the vicinity of our shores and harbours. These have been heretofore a topic of remonstrance, and have, in a late instance, been repeated with circumstances peculiarly provoking, as they include the murder of an American seaman within the jurisdictional limits of the United States. Mr. Monroe is in full possession of the documents explaining a former instance. Herewith will be received those relating to the late one. They not only support a just demand an exemplary punishment of the offenders, and of indemnity for the spoliation, but call for some stipulations guarding against such outrages in future. With this view, it is proper that all armed belligerent ships should be expressly and effectually restrained from making seizures or searches within a certain distance from our coasts, or taking stations near our harbours commodious for those purposes.

In defining the distance protected against belligerent proceedings, it would not, perhaps, be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf Stream, to expect an immunity for the space between that limit and the American shore. But at least it may be insisted that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory. Without any particular inquiry into the extent of these, it may be observed, 1st. That the British Act of Parliament in the year 1736, 9 George II, cap. 35, supposed to be that called the Hovering Act, assumes, for certain purposes of trade, the distance of four leagues from the shores. 2nd. That it appears that, both in the reign of James I and of Charles II,* the security of the commerce with British ports was provided for by express prohibitions, against the roving or hovering of belligerent ships so near the neutral harbours and coasts of Great Britain, as to disturb or threaten vessels homeward or outward bound, as well as against belligerent proceedings generally, within an inconvenient approach towards British territory.

With this example, and with a view to what is suggested by our own experience, it may be expected that the British Government will not refuse to concur in an Article to the following effect:

"It is agreed that all armed vessels belonging to either of the parties engaged in war, shall be effectually restrained by positive orders, and penal provisions, from seizing, searching, or otherwise interrupting or disturbing vessels to whomsoever belonging, whether outward or inward bound, within the harbours or the chambers formed by

* See L. Jenkins, vols. i and ii.

headlands, or anywhere. At sea, within the distance of four leagues from the shore, or from a right line from one headland to another, it is further agreed, that, by like orders and provisions, all armed vessels shall be effectually restrained by the party to which they respectively belong, from stationing themselves, or from roving or hovering so near the entry of any of the harbours or coasts of the other, as that merchantmen shall apprehend their passage to be unsafe, or in danger of being set upon and surprised; and that in all cases where death shall be occasioned by any proceeding contrary to these stipulations, and the offender cannot conveniently be brought to trial and punishment under the laws of the party offended, he shall, on demand made within — months, be delivered up for that purpose."

If the distance of four leagues cannot be obtained, any distance not less than one sea-league may be substituted in the Article. It will occur to you that the stipulation against the roving and hovering of armed ships on our coasts so as to endanger or alarm trading vessels, will acquire importance as the space entitled to immunity shall be narrowed.

No. 2.

Lord Holland and Lord Auckland to Lord Howick.

(No. 3.)

My Lord,

Holland House, November 14, 1806.

AFTER having postponed, in pursuance of your Lordship's instructions, the discussion of the Article proposed by the American Commissioners for the recovery of our deserters, and received assurances from them of their disposition to proceed to the other matters in discussion (notwithstanding their disappointment at the little prospect of agreement on that particular point), we requested them to explain their wishes with regard to the acknowledgment of a maritime jurisdiction on their coast. Upon this they recapitulated their former statement of the frequent violations of their neutrality at the mouths of their ports and within a short distance of their shores, which they corroborated by recent instances, and they dwelt on the bad effects produced on the public mind in America by such occurrences. On these grounds they urged the necessity of some recognition by Treaty of their maritime jurisdiction, and endeavoured to show that the distance of three leagues was not more than the pretensions of particular nations and the maxims of writers of authority would warrant. They urged with more confidence that though no such principle or example were allowed to have weight, still an unusual extension of jurisdiction would be justified by the peculiar circumstances of America, viz. :— 1. The extent of its territory. 2. Its distance from all other jurisdiction. 3. The number of its headlands or points. 4. The shelving nature of its coasts. We assured them of the disposition of His Majesty's Government to concede to them as ample a jurisdiction as was recognised in favour of any independent nation, but stated that no example or authority could be brought of so great a concession as a maritime jurisdiction of three leagues from the shore; and we added that any admission beyond the range of a cannon shot, or three miles (its usual interpretation) must, if granted, be considered as a concession, and only justified by the peculiar circumstances of the case. They admitted that the range of a cannon shot, or three miles, was the usual extent of maritime jurisdiction, but urged the policy of our conceding a greater distance, and concluded with expressing their anxiety to know the extent of the stipulations in their favour which our Government was prepared to accede to. Indeed, upon other points as well as this, we beg leave to urge the necessity of accelerating the negotiation; and as most of the material questions have been discussed at great length between us, we are anxious to be in possession of your Lordship's instructions, to be enabled to state on most of them (especially the Article of jurisdiction and that relating to the circuitous trade between the enemies' colonies and Europe) the views and final determination of His Majesty's Government.

We have, &c.
(Signed)

VASSALL HOLLAND
AUCKLAND.

Droit Holland and Droit Swedish to Lord Howick

My Lord,

Holland House, November 14, 1806.

IN elucidation of the subject of our public despatch, we beg leave to lay before you the following observations on the nature of the extension of jurisdiction suggested by the American Commissioners, on the real value of such a concession compared with that which they seem to set upon it, as well as the reasons which in our opinion induce them to urge it so strenuously.

The distance of a cannon shot from shore is, as far as we have been able to ascertain, the general limit of maritime jurisdiction, and that distance is for the sake of convenience practically construed into three miles, or a league. All independent nations possess such jurisdiction on their coasts; and the right to it is not only generally contained in the acknowledgment of the independence of the United States, but seems to have been specifically alluded to in the 25th Article of the Treaty of 1794. Particular circumstances resulting from immemorial usage, geographical position, or stipulations of Treaty have sometimes led to an extension of jurisdiction, and may therefore, when applicable, be urged as a justification of such a pretension.

The natural causes which should lead to such exceptions are variously stated by authors, and those urged by the American Commissioners as applicable to their country are to be found occasionally among them. Thus, the remoteness of a country from the jurisdiction of all others is acknowledged as diminishing the inconvenience of an extension of her own. The practice of some nations, even at this day, though not of great authority, is founded on such a claim, and even the admitted jurisdiction over an inland sea seems to rest on reasoning nearly similar. Selden, who had, however, a strong bias in favour of extended jurisdictions, argues from such a principle in favour of the maritime pretensions of England; and the claim of a division of the sovereignty of a sea lying between two Powers such as Great Britain and Spain, has been asserted, and is still sectionally maintained in our law books of authority.

The space between headlands is more generally laid down, and admitted by Grotius himself, as subject to the exclusive jurisdiction of the power to whom the land belongs. But neither in theory nor in practice do we find the distance between the headlands to which such a rule must exclusively apply accurately defined. James I. by his royal proclamation, dated 1st of March, 1604, prohibiting hostilities between belligerent nations within his jurisdiction, stated headlands more than ninety miles distant one from another as forming bays necessarily dependent on and belonging to the adjoining territory; but it is remarkable that the Spaniards, who were one of the objects of this prohibition, considered the order as a relaxation, not as an extension of his lawful jurisdiction over the seas.

The circumstance, however, on which the American Commissioners have chiefly relied is the shelving nature of their coast; and though from the east end of Long Island northwards it does not deserve such a description, they allege that it is so broken with rocks as to oblige coasting vessels to keep at a considerable distance from the land. A shelving coast is urged as a reason for an extension of jurisdiction, on the principle that a right over the neighbouring parts of the sea is not solely founded on power, but on convenience for the protection of trade from the molestation of belligerent vessels; and an inference may be thence drawn in favour of an extension of jurisdiction on a coast where the usual limits admit of little or no navigation.

Though such protection afforded to their coasters gives them a local exemption from our right of impressment, it would diminish, it is said, the odium attached to that practice among them in a much greater degree than it would abridge the advantages resulting from it to us. For, one instance of vexation within sight of the shore excites more discontent than many of a similar nature which do not reach the country till the passions of the parties have in a great measure subsided.

Though claims of an extension of jurisdiction beyond the common shot, of the three miles have been asserted and maintained in particular instances by most maritime powers, and especially by ourselves and the Spaniards, we meet with few instances of a recognition of such claims in treaties, probably owing to the unreasonable extent to which the respective honour of nations has been pledged to support them. The acquiescence in the right of fisheries at a considerable distance from the coast, sometimes at twenty leagues, and the submission to revenue laws, such as our hovering acts, &c., might indeed be argued with some plausibility as a proof of the exception allowed by nations to the general limitation of maritime jurisdiction.

By our Treaty of Peace and Commerce with Tripoli, concluded 19th of September, 1751, it is stipulated that the vessels of Tripoli shall not cruise or look for prizes within sight of the island of Minorca or city of Gibraltar, and the same stipulation is introduced into our Treaty with Tunis of the 19th of October, 1751, with this addition, that any prize taken by the ships of Tunis within ten miles of the aforesaid places, shall be restored without any contradiction; and Spain in her Treaty with Tripoli of 1784, stipulated that the Tripoline corsairs should not capture vessels within ten leagues of her coast.

If your Lordship should deem it expedient on other grounds to concede any extension of jurisdiction to the United States beyond that which their independence necessarily implies, the American Commissioners have more than once assured us that they are ready in the Article itself to acknowledge it as an exception to the general rule arising from the particular circumstances of their situation and peculiar nature of their coast. We shall also observe that their utmost expectation after our conversations on the subject, is two marine leagues.

The disadvantages of such a stipulation to us would be the additional protection of a league to our enemies and to our deserters in the American Service, and a fear has also been expressed by a very intelligent sea Officer, that the difficulty of ascertaining the distance would add to the frequency of the disputes. But without dwelling on the uncertainty of the criterion at present resorted to for ascertaining the distance, viz., the depth of the water, a reference to the cases which have occurred during this and the late war would amply prove that as far as the practice of our cruisers is concerned, the present limits of jurisdiction are no security against mistake, or at least against litigation.

We might, on the other hand, derive some little advantage from the claim it would justify of an extended jurisdiction and consequent protection of revenue and commerce on the coasts of our colonial possessions. But the chief benefit we could expect to derive from it is the conviction in the American public of our conciliatory disposition towards them, an object which the language and conduct of Mr. Monroe and Mr. Pinkney have persuaded us that they and the American Government have as much at heart as any of those which were the immediate causes of their mission. They are anxious to remove the causes which led to the misunderstanding between the two countries; but it is obvious that they are more anxious to prevent the consequences of that misunderstanding. The ferment occasioned by it is considered by them as the chief obstacle to the adoption of a system more friendly to Great Britain, and in urging the extension of jurisdiction they evidently consider the effect on the public mind in America more than the intrinsic value of the acquisition.

We have, &c.
(Signed) VASSALL HOLLAND.
AUCKLAND.

No. 11.

The King's Advocate to Lord Howick.

My Lord,

Lincoln's Inn Fields, November 17, 1806.

I HAVE had the honour to receive your Lordship's private letter of yesterday's date, inclosing two letters from Lord Holland and Lord Auckland, in relation to a demand urged by the American Commissioners for an extension of their maritime jurisdiction; and, agreeably to your Lordship's desire, I proceed (as far as the shortness of the time enables me) to state my opinion, together with such observations as occur to me, upon the subject.

The private letter of Lord Holland and Lord Auckland takes so full and correct a view of the matter as to leave me little to add.

The demand of an extension of maritime jurisdiction made by the United States cannot (in my opinion) be maintained as matter of right, either upon principle or authority, and if it be granted, it should be accepted as a concession depending for its basis upon corresponding concessions, and for its continuance upon that of the Treaty.

The general principle is, that the high seas are extra-territorial. There is no occupancy and possession of them, which is the basis of territorial dominion.

The true reason of the rule by which the right of territory extends over the sea to the distance of cannon shot from the shore (construed practically one league), I apprehend

to be, first, that to that extent the territory may afford its protection from the shore; and next, that hostility within that distance may endanger the safety of the inhabitants upon the shore.

Else, why is it limited to the distance of cannon shot?

If this view of the principle be correct, the grounds assigned by the American Commissioners to sustain their demand, found no reason for extending their jurisdiction as matter of right, namely—1. The extent of their territory; 2. Its distance from other jurisdictions; 3. The number of headlands; 4. The shelving nature of its coasts.

The last reason (which is much relied upon) seems pressed upon the ground that vessels sailing along the coasts are obliged to keep at a distance from the shores. The answer to which is furnished by resorting to the above principle of territorial jurisdiction. It does not exist for the purpose of protecting coasts, but because protection can be given. If coasters go out of cannon-shot, they may be visited by belligerent cruisers without endangering the safety of the inhabitants on shore, and without offending the dignity of the territory by calling in question its protecting powers.

It is true that England has asserted a more extended dominion over the British seas, and more especially in those parts of the sea included within imaginary lines drawn from certain headlands to others, and commonly called The King's Chambers; but this privilege rests upon immemorial usage and the recognition or acquiescence of other nations. Possibly the concession might have been originally granted in consideration of the English keeping those seas free from pirates. Be that as it may, and whether this privilege would now be admitted or maintained, still being a special privilege founded upon usage it is obvious that it gives no claim to similar privileges not so sanctioned on the part of other States or that this exception should become the general rule, contrary to principle and unsupported by usage.

On these considerations I am of opinion that no right exists in the United States for demanding the extension of their territory at sea beyond cannon shot or one league from the shore. And if it is to be conceded, it must be in consideration of corresponding concessions and reciprocal advantages.

It may be proper, therefore, to suggest what may be the inconveniences to be apprehended from the concession, in order to estimate the extent of the reciprocal demand to be founded on it.

1. The inconvenience of extending any rule beyond its reason; which renders it indefinite and arbitrary. If the right of territory is to extend to two leagues, may not a demand be set up to extend it to twenty or 200?

2. The inconvenience of the precedent by which other nations will be induced to apply for similar concessions. The extension of territory in favour of the United States may possibly not be attended with considerable practical effects, but if the rule became general, it might very materially affect the interests of this country in the exercise of its maritime rights, when applied to the coasts of Europe, by protecting the commerce of the enemy to the extent, in many instances, of entirely defeating the power of capture.

3. The undue advantage which give to the enemy, not only extending their means of refuge, but by enabling them to capture British vessels or British goods on board neutral and even American vessels, in situations which British cruisers cannot capture the property of the enemy, nor even their cruisers which may be there preying upon the commerce of His Majesty's subjects, for I do not understand that other nations have granted this extension to the jurisdiction of the United States; so that, while to Great Britain the jurisdiction is to extend to two leagues, to other nations the distance of cannon shot will continue to be the rule.

This last inconvenience might in its degree be considerably obviated by restricting the extended territorial right to American ships only, so that the vessels of the enemy, and of all other countries, should be still liable to be visited and captured as usual at the distance of three miles from the shore.

This restriction to the concession would also tend to remove much of the inconvenience objected to it in some of the other respects.

These, my Lord, are the observations which occur to me upon the subject, and which (as desired) I furnish without delay. Trusting that your Lordship will overlook the hasty and imperfect manner in which they may be expressed,

I have, &c.

(Signed)

J. NICHOLL

Messrs. Monroe and Pinkney to Lord Holland and Lord Auckland.

November 20, 1806.

THE Undersigned, Commissioners Extraordinary and Plenipotentiary of the United States of America, had the honour at their last conference to state to Lord Holland and Lord Auckland their anxious wish that the conventional arrangements which the Undersigned expect with confidence from the just and amicable disposition of His Majesty's Government should not be longer postponed. In recapitulating to their Lordships, in a more precise form, the very urgent considerations by which that wish has been prompted, the Undersigned persuade themselves that their Lordships will see only another proof of their unfeigned desire that the basis upon which they trust it will be practicable to place the relations of the two countries may, for the happiness of both, derive strength and permanency from reciprocal good will, as well as from mutual interest.

The Undersigned venture to believe that in the discharge of the important trust confided to them by their Government, they have not forgotten what was due either to personal attention and accommodation, or to the acknowledged delicacy and difficulty of some of the topics of discussion. At the present stage of the negotiation, however, they are not aware that any reasons exist on either side for farther delay; and they feel assured that their Lordships will not fail to give to the inducements to despatch their full effect.

Exclusive of the evident tendency of protracted discussions to excite uneasy sensations in both countries, the consequences of which may not be completely removed by that which, if seasonably applied, had been sufficient to prevent them; exclusive of the value which in a general view, a friendly promptitude would necessarily impart, in the estimation of the Government and people of the United States, to an adjustment of their differences with Great Britain; the Undersigned have had the honour to suggest for their Lordships' consideration the following motive to an early conclusion of their labours. It is too obviously important to require to be enlarged upon, that the result of the mission of the Undersigned should be communicated to their Government during the approaching annual session of the Congress, in season to be acted upon at that session. The Senate of the United States must in their executive character, pronounce upon that result as the constitutional advisers of the President, and, if the Treaty should be ratified, the Congress may, and probably will, be called upon in its legislative character, to assist in executing it. The annual Session commences on the first Monday in the next month, and must terminate, with the functions of the present House of Representatives, on the 3rd of March. But if the Treaty should not be made within the next three or four weeks, it is scarcely possible that it should reach the United States sooner than the middle or last of February, when the Session will be on the point of closing. The Undersigned are so entirely convinced of the force of this single consideration, that they deem it unnecessary to insist upon other topics of great weight tending to the same conclusion. They might otherwise recall to their Lordships' attention the anxiety with which the issue of this negotiation cannot but be expected here, as well as in America, the various interests which it involves, and the feelings, individual and national, which it ought to tranquillize.

The Undersigned, &c.

(Signed)

JAS. MONROE.
WM. PINKNEY.

Lord Holland and Lord Auckland to Lord Howick.

My Lord,

Foreign Office, November 20, 1806.

AFTER many and full discussions, the American Commissioners have given us to understand that they cannot accept the project marked A, and would prefer (whatever the resulting inconvenience may be) to have no Article or explanation whatever; and they expressed a disposition to admit an Article to the following effect:—

1. A recital of special circumstances, locality, remoteness, shelving shores, &c.
2. In consideration thereof that British vessels shall not stop, search, or molest the

vessels of the United States or of other nations within two marine leagues from the shore of the said States; but that the said stipulation shall not take effect in respect to the ships of any nation which shall not have agreed equally to adopt the limit aforesaid, in which case the limit shall be one marine league.

2. And the vessels of Great Britain shall be protected within the said limit.

We have, &c.

(Signed) VASSALL HOLLAND.
AUCKLAND.

Inclosure in No. 13.

(A.)

AND that all violations of maritime and territorial jurisdiction may be prevented, it is agreed that the armed vessels belonging to the United Kingdom of Great Britain and Ireland, shall be restrained from seizing, searching, stopping, or otherwise interrupting or molesting vessels, to whomsoever belonging, within the harbours of the United States, or within cannon shot of the shore of the said State, or within the distance of one marine league of the said shore.

And the United States, on their part, agree that they will not permit the vessels or goods belonging to the United Kingdom of Great Britain and Ireland, to be captured or molested by any Power at War with the United Kingdom within the harbours of the United States, or within the aforesaid distance from their shores.

No. 14.

Messrs. Monroe and Pinkney to Mr. Madison.

(Extract.)

London, January 3, 1807.

THE XIIth Article establishes the maritime jurisdiction of the United States to the distance of five marine miles from their coast, in favour of their own vessels and the unarmed vessels of all other Powers who may acknowledge the same limit. This Government contended that three marine miles was the greatest extent to which the pretension could be carried by the Law of Nations, and resisted, at the instance of the Admiralty and the law officers of the Crown, in Doctors' Commons, the concession which was supposed to be made by this arrangement with great earnestness. The Ministry seemed to view our claim in the light of an innovation of dangerous tendency, whose admission, especially at the present time, might be deemed an act unworthy of the Government. The outrages lately committed on our coast, which made some provision of the kind necessary as a useful lesson to the commanders of their squadrons, and a reparation for the insults offered to our Government, increased the difficulty of obtaining any accommodation whatever. The British Commissioners did not fail to represent that which is contained in this Article as a strong proof of a conciliating disposition in their Government towards the Government and people of the United States. The limit established was not so extensive as that which we had contended for, and expected to have obtained; we persuaded ourselves, however, that the great object which was contemplated by any arrangement of the subject, will result from that which has been made. The Article in the Treaty, in connexion with the causes which produced it, forms an interesting occurrence in the history of our country, which cannot fail to produce the most salutary consequences. It is fit to presume, that the sentiment of respect which Great Britain has shown by this measure for the United States, will be felt and observed in future by her squadrons in their conduct on our coast, and in our bays and harbours. It is equally fair to presume that the example of consideration which it affords in their favour by a nation so vastly preponderant at sea, will be followed by other Powers.

Inclosure in No. 14.

Article XII of Treaty of Amity, Commerce, and Navigation, between Her Britannic Majesty and the United States of America.

AND whereas it is expedient to make special provisions respecting the maritime jurisdiction of the High Contracting Parties on the coast of their respective possessions in North America on account of peculiar circumstances belonging to those coasts, it is agreed that in all cases where one of the said High Contracting Parties shall be engaged in war and the other shall be at peace, the belligerent Power shall not stop, except for the purpose hereafter mentioned, the vessels of the neutral Power, or the unarmed vessels of other nations, within five marine miles from the shore belonging to the said neutral Power on the American sea.

Provided that the said stipulation shall not take effect in favour of the ships of any nation or nations which shall not have agreed to respect the limits aforesaid as the line of maritime jurisdiction of the said neutral State. And it is further stipulated, that if either of the High Contracting Parties shall be at war with any nation or nations which shall not have agreed to respect the said special limit or line of maritime jurisdiction herein agreed upon, such Contracting Party shall have the right to stop or search any vessel beyond the limit of a cannon shot, or three marine miles from the said coast of the neutral Power, for the purpose of ascertaining the nation to which such vessel shall belong; and with respect to the ships and property of the nation or nations not having agreed to respect the aforesaid line of jurisdiction, the belligerent Power shall exercise the same rights as if this Article did not exist, and the several provisions stipulated by this Article shall have full force and effect only during the continuance of the present Treaty.

No. 15.

Viscount Palmerston to Mr. Crampton.

(No. 18.)

Sir,

Foreign Office, April 14, 1848.

I OBSERVE in the Vth Article of the Treaty of Peace between the United States and Mexico, which was signed on the 2nd of February last, that the boundary line between the two Republics is defined as commencing in "the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande."

As the tenor of this Article appears to involve an assumption of jurisdiction on the part of the United States and of Mexico over the sea beyond the usual limit of one marine league (or three geographical miles) which is acknowledged by international law and practice as the extent of territorial jurisdiction over the sea that washes the coasts of States, I have to instruct you to draw the attention of the United States' Government to this matter, and to state in writing that, in order to prevent future misunderstanding, Her Majesty's Government think it right to declare that they cannot acquiesce in the extent of maritime jurisdiction assumed by the United States and by Mexico in the Article in question.

You will say that this step is the more necessary on the part of His Majesty's Government, because the Gulf of Mexico is a great thoroughfare of maritime commerce, and is not like a bay or creek which can by its nature be susceptible of being subjected to exclusive dominion.

I have instructed Her Majesty's *Chargé d'Affaires* in Mexico to address a similar declaration to the Mexican Government.

I am, &c.

(Signed) PALMERSTON.

(No. 5)
My LNo. 11
which
the U
to dec
the U
which
two r
opposSir,
Unite
States
the t
land,assum
beyond
ledges
see w
Govern
ment
jurisdof He
marit
being
decla(No.
My Ithe h
taine
a not
Her
exter
Artic
which
Gulp

No. 16.

Mr. Crampton to Viscount Palmerston.—(Received May 17.)

(No. 54.)

My Lord,

Washington, April 30, 1848.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 18 of the 14th instant, and I have the honour to inclose herewith a copy of the note which, in obedience to the instructions contained in that despatch, I have addressed to the United States' Government, stating that Her Majesty's Government think it right to declare that they cannot acquiesce in the extent of maritime jurisdiction assumed by the United States and Mexico in the fifth Article of the Treaty between those Powers which was signed on the 2nd of February last, by which the boundary line between the two republics is defined as commencing "in the Gulph of Mexico, three leagues from land, opposite the mouth of the Rio Grande."

I have, &c.

(Signed) JOHN F. CRAMPTON.

Inclosure in No. 16.

Mr. Crampton to Mr. Buchanan.

Sir,

Washington, April 30, 1848.

I HAVE been instructed by Her Majesty's Government to call the attention of the United States to that part of the Vth Article of the Treaty of Peace between the United States and Mexico, signed on the 2nd February, by which the boundary line between the two Republics is defined as commencing in "the Gulph of Mexico, three leagues from land, opposite the mouth of the Rio Grande."

As the tenor of this Article appears to Her Majesty's Government to involve an assumption of jurisdiction on the part of the United States and Mexico, over the sea, beyond the usual limit of one marine league (or three geographical miles) which is acknowledged by international law and practice as the extent of territorial jurisdiction over the sea which washes the coasts of States, I have been directed to state to the United States' Government that in order to prevent future misunderstanding, Her Majesty's Government think it right to declare that they cannot acquiesce in the extent of maritime jurisdiction assumed by the United States and by Mexico in the Article in question.

I am further instructed to remark that this step is the more necessary on the part of Her Majesty's Government, because the Gulph of Mexico is a great thoroughfare of maritime commerce, and is not like a bay or creek, which can by nature be susceptible of being subjected to exclusive dominion.

Her Majesty's Charge d'Affaires in Mexico has been instructed to address a similar declaration to the Mexican Government.

I have, &c.

(Signed) JOHN F. CRAMPTON.

No. 17.

Mr. Crampton to Viscount Palmerston.—(Received September 15.)

(No. 105.)

My Lord,

Washington, August 28, 1848.

WITH reference to my despatch No. 54 of the 30th of April last, in which I had the honour to inform your Lordship that I had, in obedience to the instructions contained in your Lordship's despatch No. 18 of the 14th of the same month, addressed a note, of which a copy was inclosed, to the United States' Government, stating that Her Majesty's Government thought it right to declare that they cannot acquiesce in the extent of maritime jurisdiction assumed by the United States and Mexico in the fifth Article of the Treaty between those Powers signed on the 2nd of February last, by which the boundary line between the two republics is defined as commencing "in the Gulph of Mexico, three leagues from land, opposite the mouth of the Rio Grande."

I have now the honour of inclosing herewith the reply which has been made to my communication by the United States' Secretary of State, stating that the stipulation in the Treaty can only affect the rights of Mexico and the United States, and that the Government of the United States never intended by the stipulation to question the rights of Great Britain or any other Power under the Law of Nations.

I have thought it right to forward a copy of Mr. Buchanan's reply note to Her Majesty's Chargé d'Affaires to Mexico.

I have, &c.
(Signed) JOHN F. CRAMPTON.

Inclosure in No. 17.

Mr. Buchanan to Mr. Crampton.

*Department of State, Washington,
August 19, 1848.*

Sir, I HAVE had the honour to receive your note of the 30th April last, objecting, on behalf of the British Government, to the clause in the fifth Article of the late Treaty between Mexico and the United States, by which it is declared that the boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, instead of one league from land, which you observe "is acknowledged by international law and practice as the extent of territorial jurisdiction over the sea that washes the coast of States."

In answer, I have to state that the stipulation in the Treaty can only affect the rights of Mexico and the United States. If for their mutual convenience it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The Government of the United States never intended by this stipulation to question the rights which Great Britain or any other Power may possess under the Law of Nations.

I avail, &c.
(Signed) JAMES BUCHANAN.

No. 18.

Mr. Addington to the Secretary to the Admiralty.

Foreign Office, October 6, 1848.

Sir, I AM directed by Viscount Palmerston to transmit to you, for the information of the Lords Commissioners of the Admiralty, copies of an instruction which Lord Palmerston has addressed to Mr. Crampton, Her Majesty's Chargé d'Affaires at Washington, and of a despatch which his Lordship has received from Mr. Crampton in reply, relative to that part of the Vth Article of the Treaty concluded between the United States and Mexico on the 2nd of February last, which apparently involves an assumption of jurisdiction on the part of the United States and of Mexico, over the sea beyond the usual limit of three miles from the shore.

I am, &c.
(Signed) H. U. ADDINGTON.



CONFIDENTIAL.

BEHRING SEA ARBITRATION.

A History of the Treaty of Arbitration and "Modus Vivendi."

Treaty of Arbitration.

A DESPATCH from the Marquis of Salisbury to Sir J. Pouncefote, dated 2nd August, 1890, begins thus:—

British Case,
Appendix, vol. iii.
"United States
No. 2 (1890),"
p. 512.

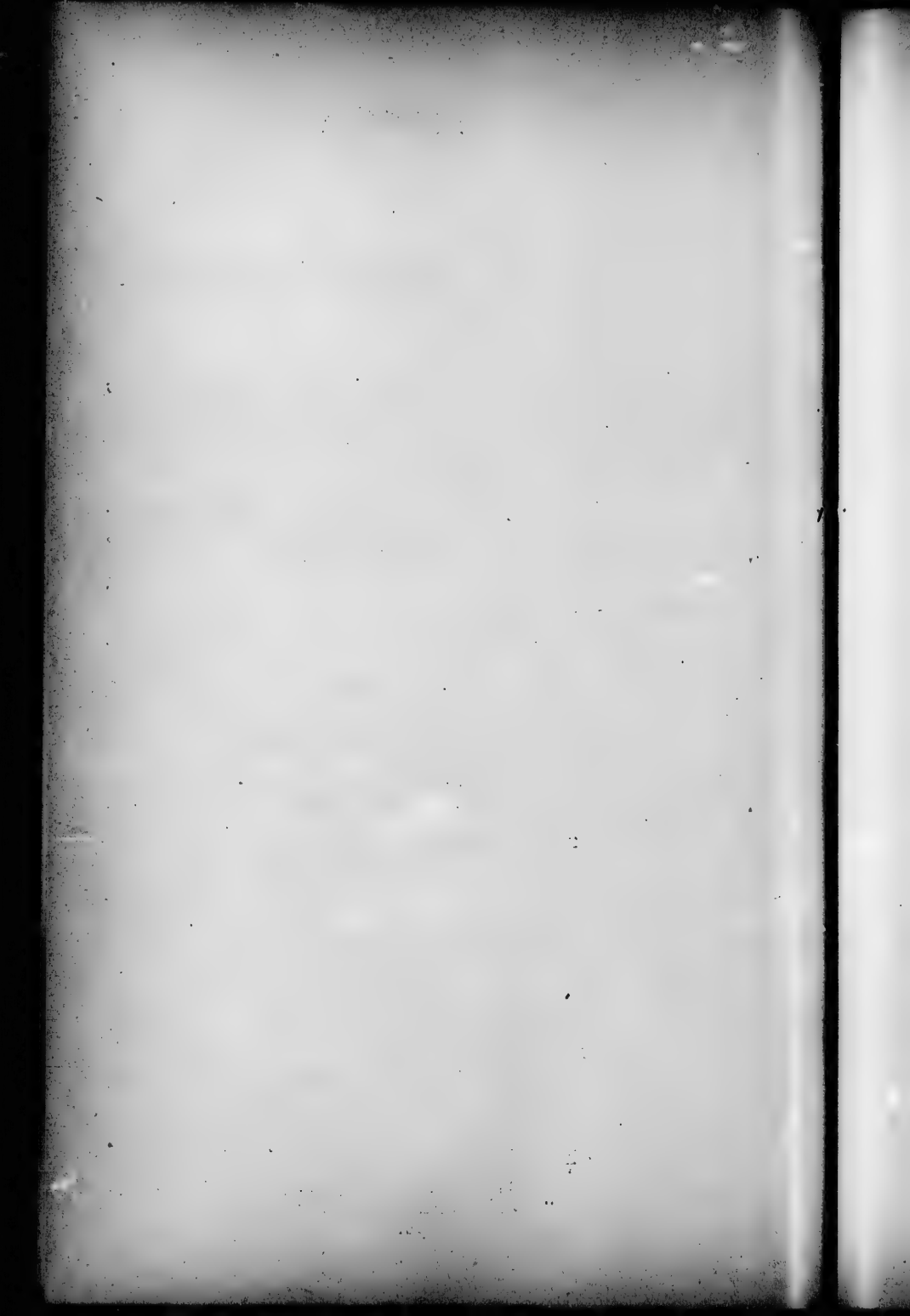
"I have received and laid before the Queen your despatch of the 1st ultimo, forwarding a copy of a note from Mr. Blaine, in which he maintains that the United States have derived from Russia rights of jurisdiction over the waters of Behring Sea to a distance of 100 miles from the coasts transferred to them under the Treaty of the 30th March, 1867."

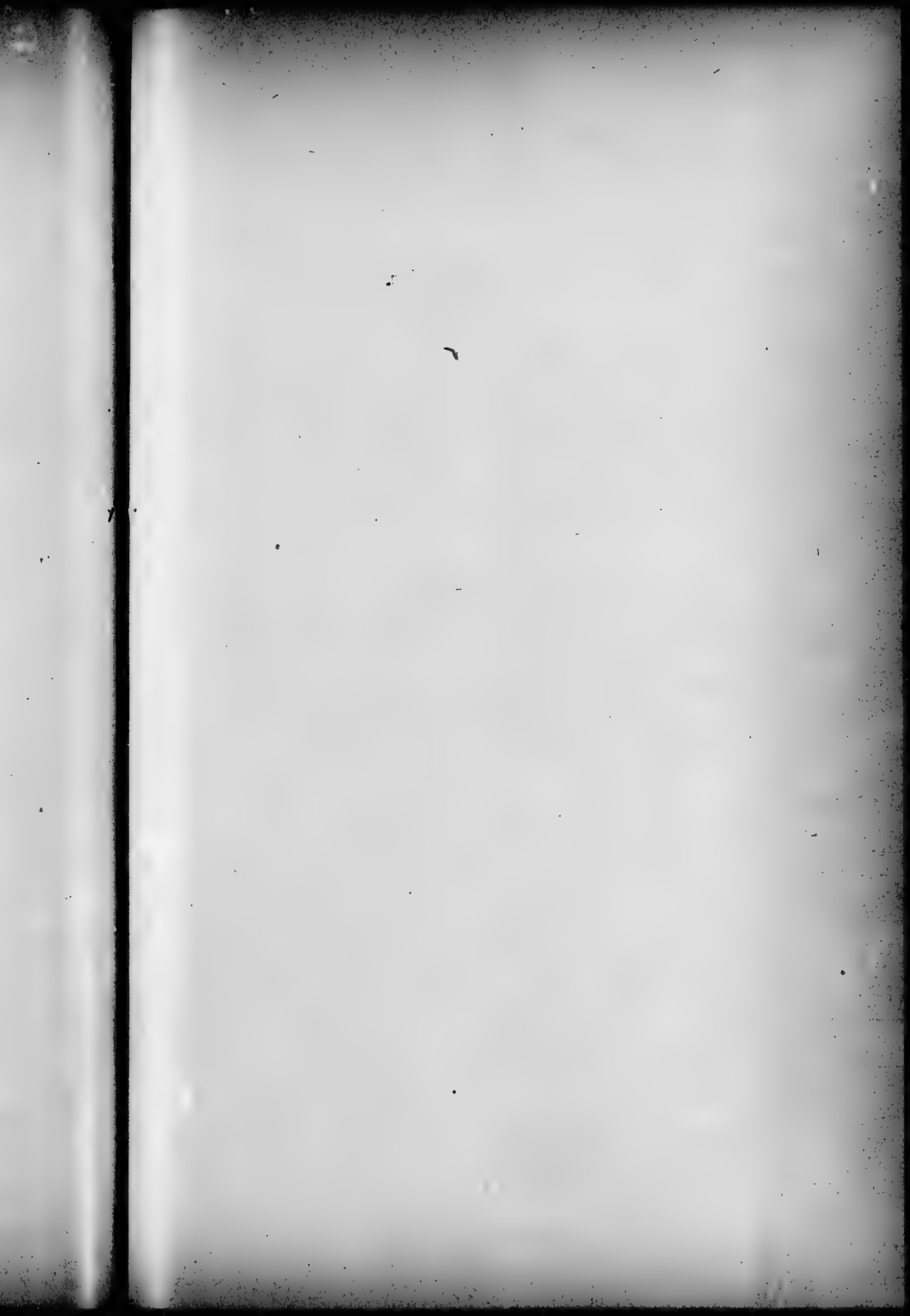
The question then supposed by the British Government to be in dispute is succinctly stated in the above words. Lord Salisbury proceeds to argue it at some length, concluding as follows:—

Ibid., pp. 519, 520. "I have to request that you will communicate a copy of this despatch, and of its inclosures, to Mr. Blaine. You will state that Her Majesty's Government have no desire whatever to refuse to the United States any jurisdiction in Behring Sea which was conceded by Great Britain to Russia, and which properly accrues to the present possessors of Alaska in virtue of Treaties or the law of nations; and that if the United States' Government, after examination of the evidence and arguments which I have produced, still differ from them as to the legality of the recent captures in that sea, they are ready to agree that the question, with the issues that depend upon it, should be referred to impartial arbitration. You will in that case be authorized to consider, in concert with Mr. Blaine, the method of procedure to be followed."

British Case,
Appendix, vol. iii.
"United States
No. 1 (1891),"
p. 37.

On the 17th December, 1890, Mr. Blaine replied. He begins a long discussion of the case with the often-quoted passage in which he says that legal and diplomatic questions often turn on





a single point; and that, in the present instance, that point is whether the phrase "Pacific Ocean," as used in the Treaties of 1824 and 1825, includes Behring Sea. Towards the end of his letter he quotes the concluding paragraph (above set out) of Lord Salisbury's letter; and proceeds:—

"In his annual Message, sent to Congress on the 1st of the present month, the President, speaking in relation to the Behring Sea question, said:—

British Case,
Appendix, vol. III.
"United States
No. 1 (1891),"
pp. 55, 56.

"The offer to submit the question to arbitration, as proposed by Her Majesty's Government, has not been accepted, for the reason that the form of submission proposed is not thought to be calculated to assure a conclusion satisfactory to either party."

"The second offer of Lord Salisbury to arbitrate amounts simply to a submission of the question whether any country has a right to extend its jurisdiction more than one marine league from the shore? No one disputes that, as a rule; but the question is whether there may not be exceptions whose enforcement does not interfere with those highways of commerce which the necessities and usage of the world have marked out. Great Britain, when she desired an exception, did not stop to consider or regard the inconvenience to which the commercial world might be subjected. Her exception placed an obstacle in the highway between continents. The United States, in protecting the seal fisheries, will not interfere with a single sail of commerce on any sea of the globe.

"It will mean something tangible, in the President's opinion, if Great Britain will consent to arbitrate the real questions which have been under discussion between the two Governments for the last four years. I shall endeavour to state what, in the judgment of the President, those issues are:—

"1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to time of the cession of Alaska to the United States?

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

"3. Was the body of water now known as the Behring Sea included in the phrase 'Pacific Ocean,' as used in the Treaty of 1825 between Great Britain and Russia; and what rights (if any) in the Behring Sea were given or conceded to Great Britain by the said Treaty?

"4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

"5. What are now the rights of the United States as to the fur-seal fisheries in the waters of the Behring Sea outside of the ordinary territorial limits, whether such rights grow out of the cession by Russia of any special rights or jurisdiction held by her in such fisheries or in the waters of

Behring Sea, or out of the ownership of the breeding islands and the habits of the seals in resorting thither and rearing their young thereon and going out from the islands for food, or out of any other fact or incident connected with the relation of those seal fisheries to the territorial possessions of the United States?

"6. If the determination of the foregoing questions shall leave the subject in such a position that the concurrence of Great Britain is necessary in prescribing Regulations for the killing of the fur-seal in any part of the waters of Behring Sea, then it shall be further determined: (1) How far, if at all, outside the ordinary territorial limits it is necessary that the United States should exercise an exclusive jurisdiction in order to protect the seal for the time living upon the islands of the United States and feeding therefrom? (2) Whether a closed season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limits shall be prohibited) is necessary to save the seal-fishing industry, so valuable and important to mankind, from deterioration or destruction? And, if so (3) What months, or parts of months, should be included in such season, and over what waters it should extend?"

British Case,
Appendix, vol. iii.
"United States
No. 1 (1892),"
pp. 89, 90.

On the 21st February, 1891, Lord Salisbury writes to Sir J. Pauncefoot accepting questions 1, 2, and 4. He deals with questions 3 and 5 as follows:—

"The third question is expressed in the following terms: 'Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia; and what rights (if any) in the Behring Sea were given or conceded to Great Britain by the said Treaty?'

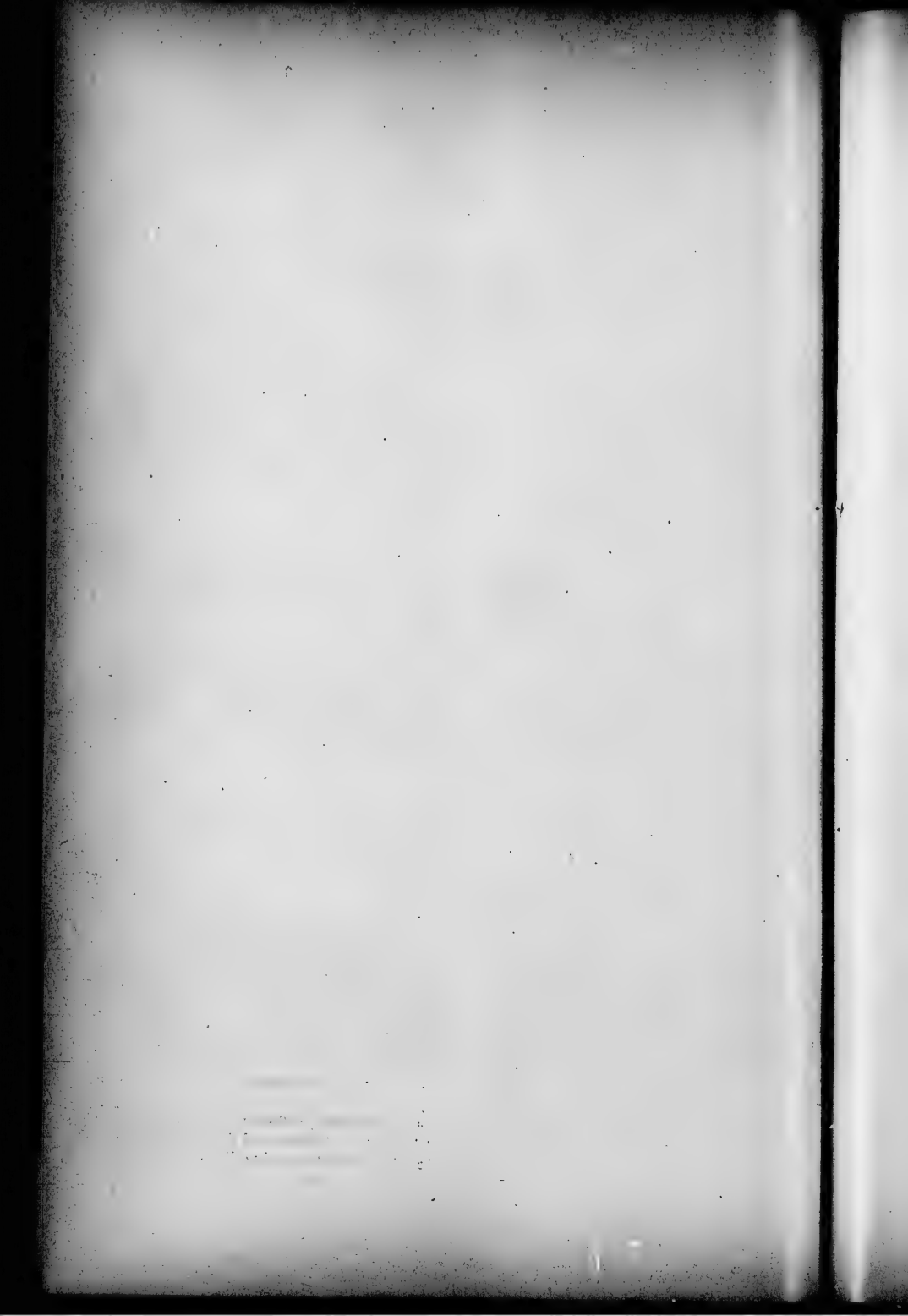
"Her Majesty's Government would have no objection to referring to arbitration the first part of that question, if it should be thought desirable to do so; but they would give that consent with the reservation that they do not admit that the decision of it can conclude the larger questions which the Arbitrator would have to determine. To the latter part of No. 3 it would be their duty to take exception:—

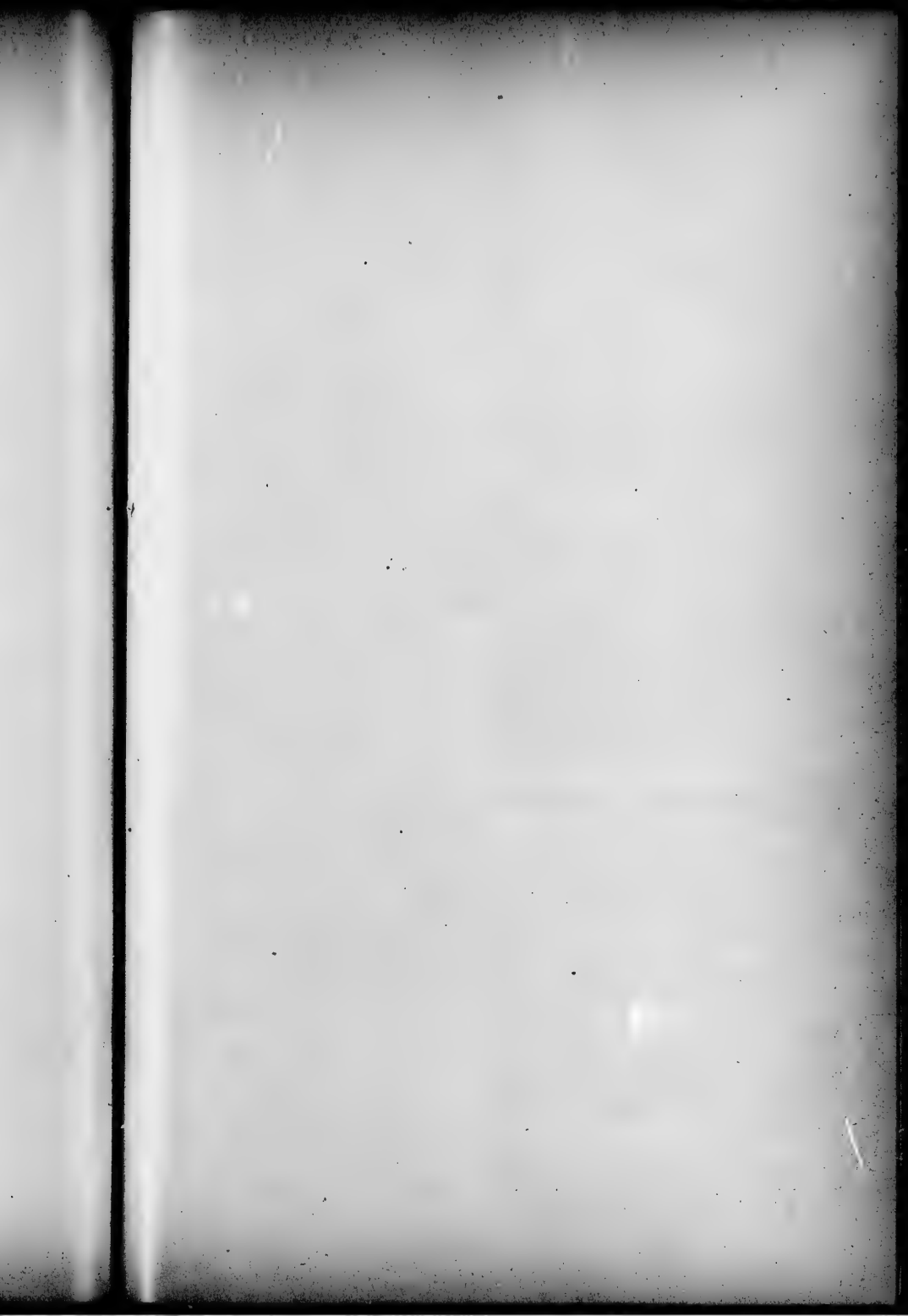
"What rights, if any, in the Behring Sea were given or conceded to Great Britain by the said Treaty?"

"Great Britain has never suggested that any rights were given to her or conceded to her by the said Treaty. All that was done was to recognize her natural right of free navigation and fishing in that as in all other parts of the Pacific Ocean. Russia did not give those rights to Great Britain, because they were never hers to give away.

"The fifth proposed question runs as follows (quoting it).

"The first clause, 'What are now the rights of the United States as to the fur-seal fisheries in the waters of the Behring Sea outside of the ordinary territorial limits?'





is a question which would be very properly referred to the decision of an Arbitrator. But the subsequent clause, which assumes that such rights could have grown out of the ownership of the breeding islands, and the habits of the seals in resorting thereto, involves an assumption as to the prescriptions of international law at the present time to which Her Majesty's Government are not prepared to accede. The sixth question, which deals with the issues that will arise in case the controversy should be decided in favour of Great Britain, would perhaps more fitly form the substance of a separate reference. Her Majesty's Government have no objection to refer the general question of a close time to arbitration, or to ascertain by that means how far the enactment of such a provision is necessary for the preservation of the seal species; but any such reference ought not to contain words appearing to attribute special and abnormal rights in the matter to the United States."

The letter then concludes:—

"There is one omission in these questions which I have no doubt the Government of the President will be very glad to repair; and that is the reference to the Arbitrator of the question, what damages are due to the persons who have been injured, in case it shall be determined by him that the action of the United States in seizing British vessels has been without warrant in international law. Subject to these reservations, Her Majesty's Government will have great satisfaction in joining with the Government of the United States in seeking by means of arbitration an adjustment of the international questions which have so long formed a matter of controversy between the two Governments.

"I have to request that you will read this despatch to Mr. Blaine, and leave a copy of it with him should he desire it."

On the 14th April, 1891, Mr. Blaine writes to Sir J. Layard a letter of which the following passage is material:—

"The modifications which Lord Salisbury suggests in the questions for arbitration do not wholly meet the views of the President, but the President changes the text of the third and fifth in such manner, it is hoped, as will result in an agreement between the two Governments. While Lord Salisbury suggests a different mode of procedure from that embodied in the sixth question, the President does not understand him actually to object to the question, and he therefore assumes that it is agreed to.

"The six questions as now proposed by the President are as follows:—

"3. Was the body of water now known as the Behring Sea included in the phrase 'Pacific Ocean,' as used in the Treaty of 1825 between Great Britain and Russia, and

British Case,
Appendix, vol. iii.
"United States
No. 1 (1892),"
p. 90.

British Case,
Appendix, vol. iii.
"United States
No. 3 (1892),"
p. 1.

what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said Treaty?

"5. Has the United States any right and, if so, what right, of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?

"6. If the determination of the foregoing questions shall leave the subject in such position that the concurrence of Great Britain is necessary in prescribing Regulations for the killing of the fur-seal in any part of the waters of Behring Sea, then it shall be further determined (1) how far, if at all, outside the ordinary territorial limits it is necessary that the United States should exercise an exclusive jurisdiction in order to protect the seal for the time living upon the islands of the United States, and feeding therefrom? (2) whether a close season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limits shall be prohibited) is necessary to save the seal-fishing industry, so valuable and important to mankind, from deterioration or destruction; and, if so, (3) what months or parts of months should be included in such season, and over what waters it should extend?

"The President does not object to the additional question respecting alleged damages to English ships proposed by Lord Salisbury, if one condition can be added, namely, that after the issues of the arbitration are joined, if the United States shall prevail, all the seals taken by Canadian vessels during the period shall be paid for at the ordinary price for which skins are sold. This seems to the President to be the complement of Lord Salisbury's proposition, and he doubts not that it will secure his Lordship's assent."

British Case,
Appendix, vol. III.
"United States
No. 3 (1892),"
pp. 4, 5.

The letter has the following inclosure:—

"Original Six Questions suggested by Mr. Blaine in his note of December 17, 1890.

"Questions as altered and now proposed by Mr. Blaine.

"1. What exclusive jurisdiction in the sea now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

"1. The same.

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

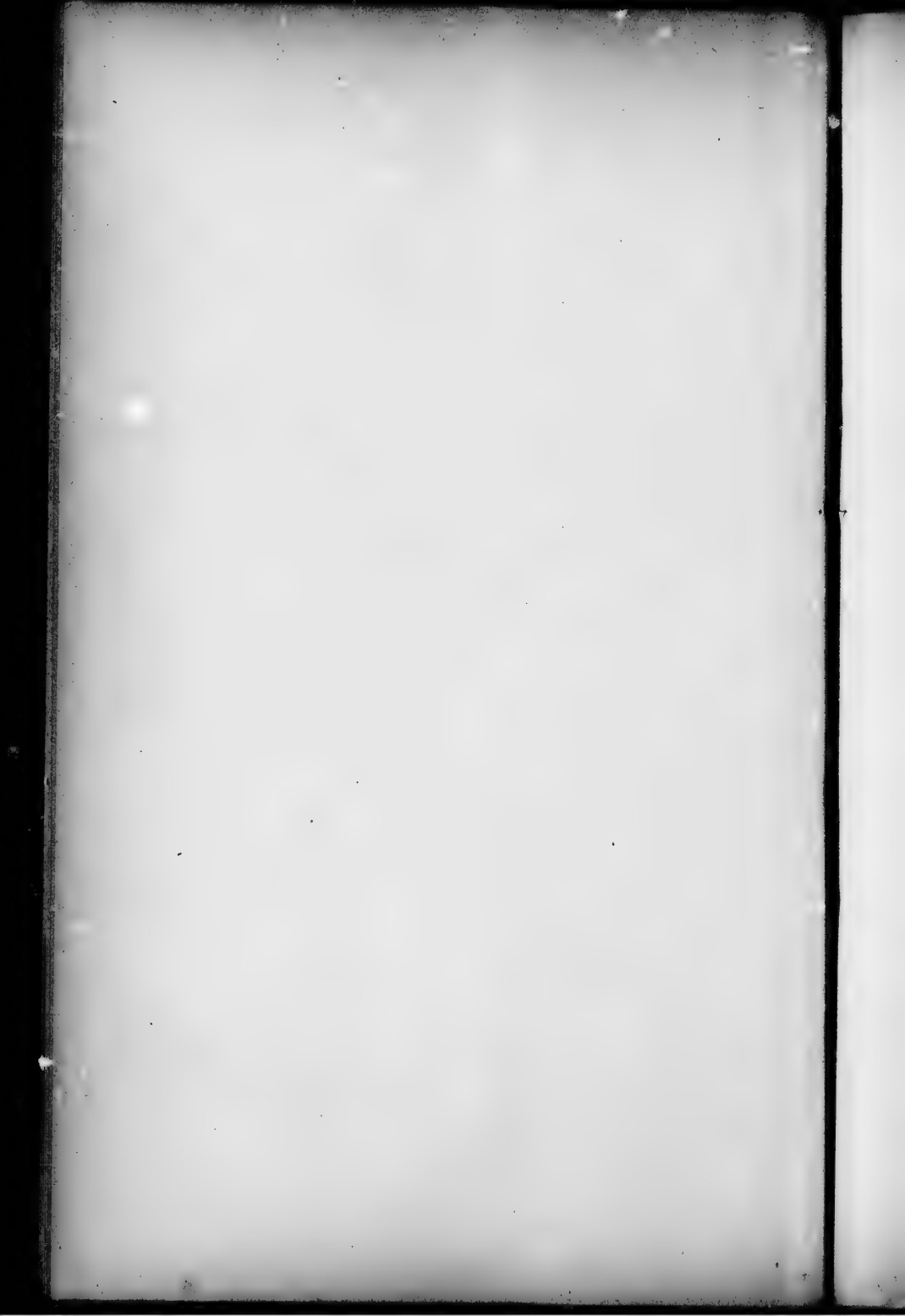
"2. The same.

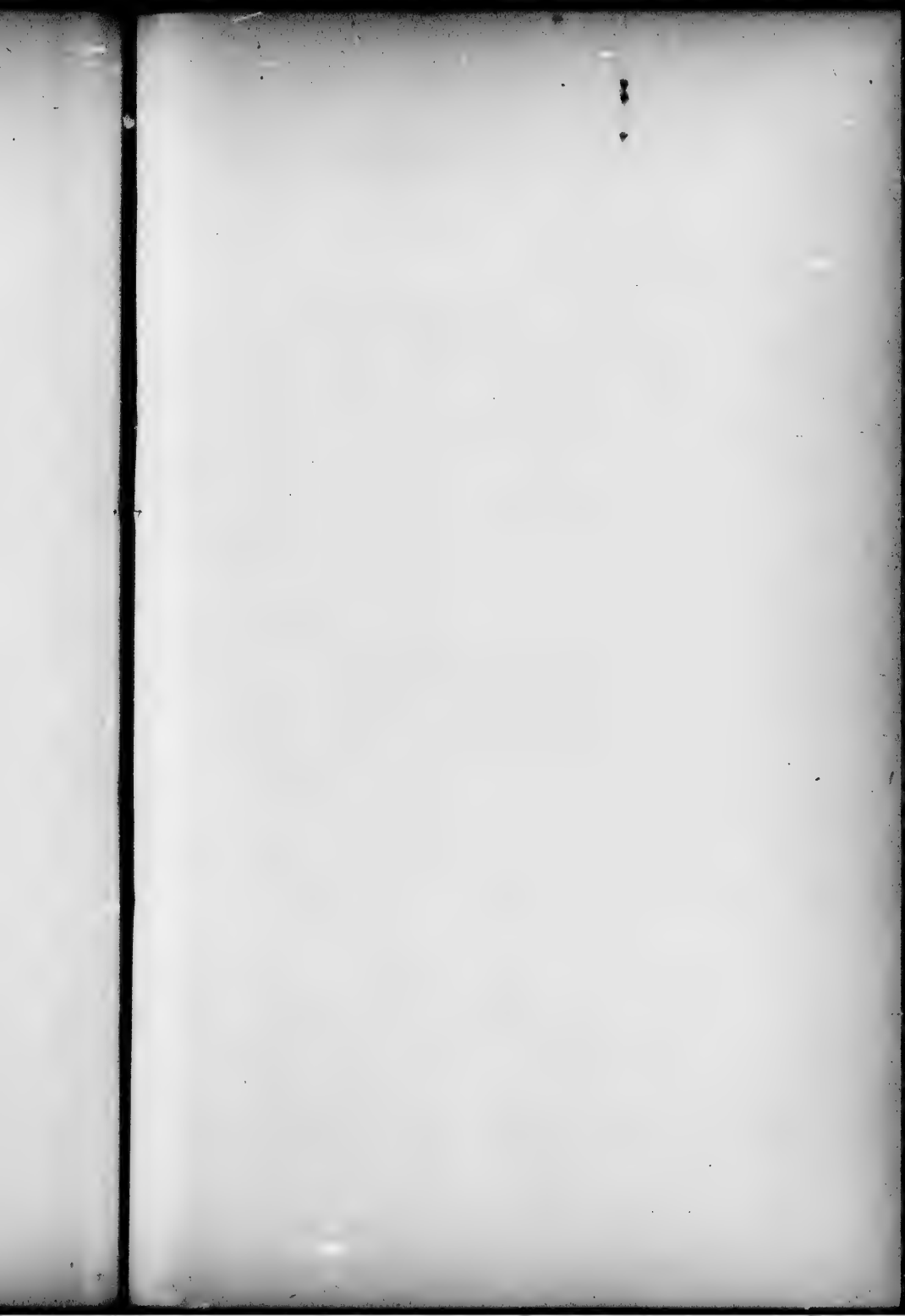
"3. Was the body of water now known as the Behring's Sea included in the phrase 'Pacific Ocean,' as used in the Treaty of 1825 between Great Britain and Russia; and what rights (if any) in the Behring's Sea were given or conceded to Great Britain by the said Treaty?

"3. Was the body of water now known as the Behring Sea included in the phrase 'Pacific Ocean,' as used in the Treaty of 1825 between Great Britain and Russia; and what rights (if any) in the Behring Sea were held and exclusively exercised by Russia after said Treaty?

"4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

"4. The same.





"5. What are now the rights of the United States as to the fur-seal fisheries in the waters of the Behring's Sea outside of the ordinary territorial limits, whether such rights grow out of the cession by Russia of any special rights or jurisdiction held by her in such fisheries or in the waters of Behring's Sea, or out of the ownership of the breeding-islands and the habits of the seals in resorting thither and rearing their young thereon and going out from the islands for food, or out of any other fact or incident connected with the relation of those seal fisheries to the territorial possessions of the United States?"

"6. If the determination of the foregoing questions shall leave the subject in such a position that the concurrence of Great Britain is necessary in prescribing Regulations for the killing of the fur-seal in any part of the waters of Behring Sea, then it shall be further determined:—

"(1.) How far, if at all, outside the ordinary territorial limits, it is necessary that the United States should exercise an exclusive jurisdiction in order to protect the seal for the time living upon the islands of the United States and feeding therefrom?

"(2.) Whether a closed season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limits shall be prohibited) is necessary to save the seal-fishing industry, so valuable and important to mankind, from deterioration or destruction? And, if so,

"(3.) What months, or parts of months, should be included in such season, and over what waters it should extend?"

"5. Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?"

"6. The same.

"(For Additional Article as to damages, see Mr. Blaine's note.)

Pursuant to telegraphic instructions from Lord Salisbury, Sir J. Pouncefote gave the following note to the United States' Government:—

United States' Case, Appendix, vol. i, p. 305.

"Memorandum.

"The Undersigned has been instructed by the Marquis of Salisbury to inform the United States' Government that Her Majesty's Government are prepared to assent to the first five questions proposed to be submitted to arbitration in the note of the Honourable James G. Blaine to the Undersigned, dated the 14th April last.

"Her Majesty's Government cannot give their assent to the sixth question formulated in that note. In lieu thereof they propose the appointment of a Commission, to consist of four experts, of whom two shall be nominated by each Government, and a Chairman, who shall be nominated by the Arbitrators. The Commission shall examine and report on the question which follows:—

"For the purpose of preserving the fur-seal race in Behring Sea from extermination, what international arrangements (if any) are necessary between Great Britain and the United States and Russia or any other Power?"

"As regards the question of compensation, Her Majesty's Government propose the following Article:—

"It shall be competent to the Arbitrators to award such compensation as in their judgment shall be equitable to the subjects and citizens of either Power who shall be shown to have been damaged in the pursuit of the industry of sealing by the action of the other Power.

(Signed) "JULIAN POUNCEFOTE.

"Washington, June 3, 1891."

British Case,
Appendix, vol. iii.
"United States
No. 3 (1892),"
p. 51.

On the 25th June, 1891, Mr. Wharton wrote to Sir J. Pauncefote proposing as the sixth question what now forms Article VII of the Treaty.

Then, after discussing the question of damages, he concludes :—

"I am directed by the President to propose the following 7th and final clause in the basis of arbitration :—

"7. It shall be competent to the Arbitrators to award such compensation as in their judgment shall seem equitable to the subjects or citizens of Great Britain whose vessels may have been seized by the United States in the Behring Sea, if such seizures shall be found by the Arbitrators to have been unwarranted, and it shall also be competent to the Arbitrators to award to the United States such compensation as in their judgment shall seem equitable for any injuries resulting to the United States or to the lessees from the Government of the privilege of taking seals on the Pribyloff Islands, by reason of killing seals in the Behring Sea by persons acting under the protection of the British flag outside of the ordinary territorial limits and since the 1st day of January, 1886, if such killing shall be found to have been an infraction of the rights of the United States."

"It being understood that an arrangement for a Joint Commission is to be made contemporaneously with the conclusion of the terms of arbitration, I am directed by the President to propose the following separate Agreement :—

"Each Government shall appoint two Commissioners to investigate conjointly with the Commissioners of the other Government all the facts having relation to seal life in Behring Sea, and the measures necessary for its proper protection and preservation.

"The four Commissioners shall, so far as they may be able to agree, make a joint Report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree:

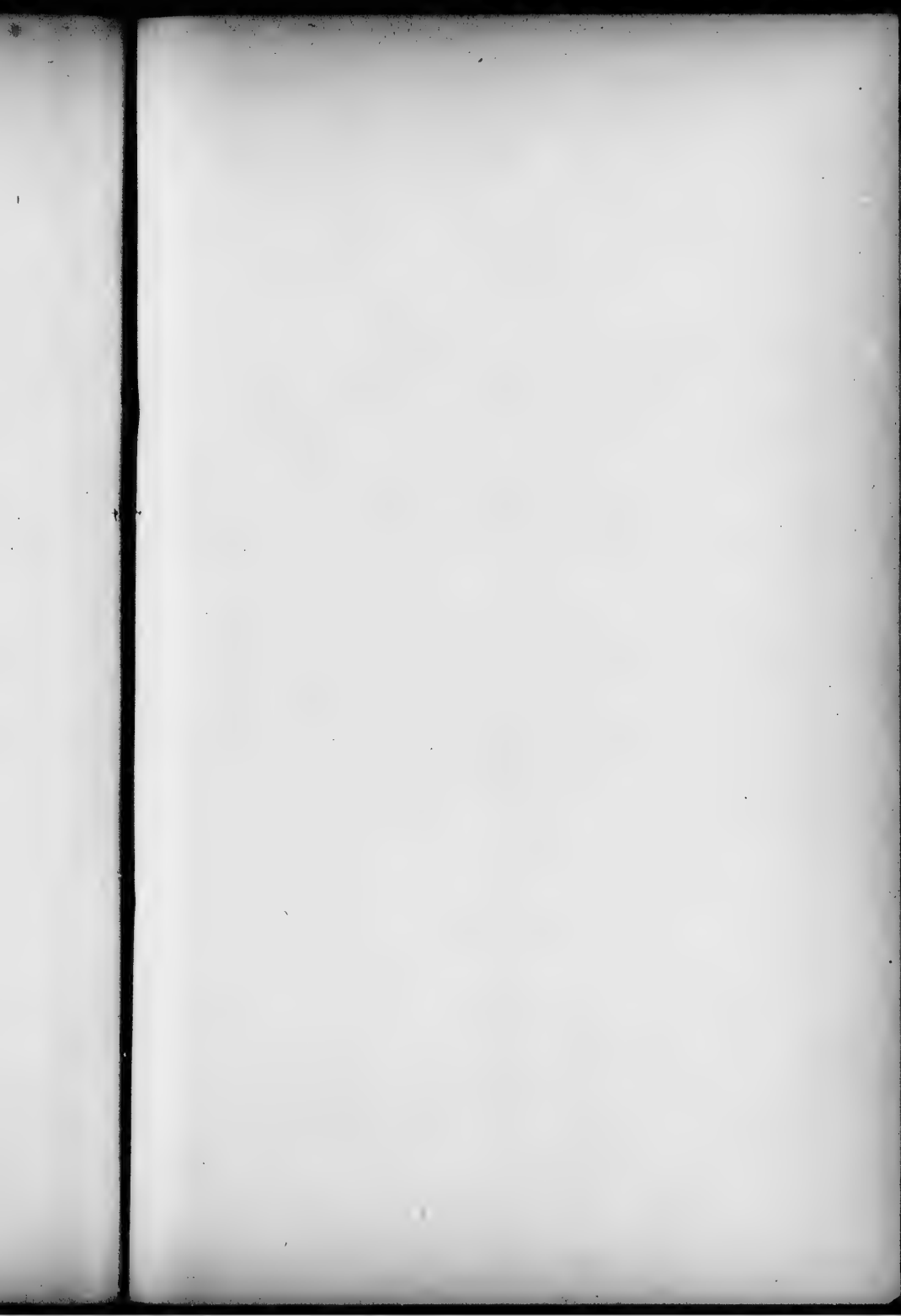
"The Reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators cannot arise."

Ibid., p. 69.

On the 13th July, 1891, Sir J. Pauncefote wrote to Mr. Wharton proposing the following clause as to damages :—

"7. Either Government may submit to the Arbitrators any claim for compensation which it may desire to prefer against the other Government in respect to any losses or injuries in relation to the fur-seal fishery in Behring Sea, for which such other Government may be legally liable.

"The Arbitrators shall decide on the legality of every such claim, and, if it shall be established, they may award such compensation as in their judgment shall seem equitable."



On the 23rd July, 1891, Mr. Wharton replies, *British Case, Appendix, vol. iii, "United States No. 3 (1892)," p. 73.* proposing instead the following clause :—

"The Government of Great Britain having presented the claims of its subjects for compensation for the seizure of their vessels by the United States in Behring Sea, and the Government of the United States having presented on its own behalf, as well as of the lessees of the privilege of taking seals on the Pribyloff Islands, claims for compensation by reason of the killing of seals in the Behring Sea by persons acting under the protection of the British flag, the Arbitrators shall consider and decide upon such claims in accordance with justice and equity and the respective rights of the High Contracting Parties, and it shall be competent for the Arbitrators to award such compensation as in their judgment shall seem equitable."

On the 26th August, 1891, Sir J. Pouncefote *Ibid., p. 79.* wrote a private letter to Mr. Wharton, proposing the following clause as to damages in substitution for that which Mr. Wharton had proposed on the 23rd July :—

"Clause 7. Either of the two Governments may submit to the Arbitrators any question of fact which it may wish to put before them in reference to the claims for compensation which it believes itself or its nationals to possess against the other.

"The question whether or not, and to what extent, these facts as determined by the Arbitrators, and taken in connection with their decision upon the other questions submitted to them, render such claims valid, according to the principles of international law, shall be a matter of subsequent negotiation, and may, if the two Powers agree, be referred, in whole or in part, to the Arbitrators."

On the 7th September, 1891, Mr. Wharton replied in a private letter containing the following passage :—

"The President is unable to accept the last suggestion which you make in your note, as it seems to him to be entirely ineffectual. The facts connected with the seizure of Canadian sealers by the revenue-vessels of the United States on the one hand, and with the invasion of the sea and the taking of seals by the Canadian sealers on the other, are well known, and doubtless could be agreed upon by the respective Governments without difficulty. It is over the question of liability to respond in damages for these acts that the controversy exists, and the President can see no other course for this Government than to insist upon the submission of the question of the liability of Great Britain for the acts it complains of to Arbitrators. This Government does not insist that Great Britain shall admit any liability for the acts complained of, but it may well insist, if this arbitration is to result in any effectual

settlement of the differences between the two Governments, that the question of Great Britain's liability shall go to the Arbitrators for decision."

On the 17th October, 1891, Sir J. Pauncefote wrote declining the clause proposed by Mr. Wharton on the 23rd July, and adding :—

British Case,
Appendix, vol. iii.
"United States
No. 3 (1892),"
p. 106.

"Both Governments being equally desirous to find a prompt solution of the difficulty which now impedes the conclusion of the Arbitration Agreement, Lord Salisbury has authorized me to make the following proposal :—

"His Lordship suggests that the six Articles of the Arbitration Agreement already accepted by both Governments should be signed now, and also an Article providing for the reference to the Arbitrators of any question of fact which either Government may desire to submit to them regarding the claims for compensation to which it considers itself to be entitled. The application of international law to those facts would be left as a matter for further negotiation after they shall have been ascertained, and might be subsequently referred to the Arbitrators, in whole or in part, if the two Governments should agree to do so.

"The above proposal presents so logical and practical an issue out of the difficulty that I cannot but think that it will commend itself to the favourable consideration of the President, and I hope it will meet with his acceptance."

Ibid., p. 110.

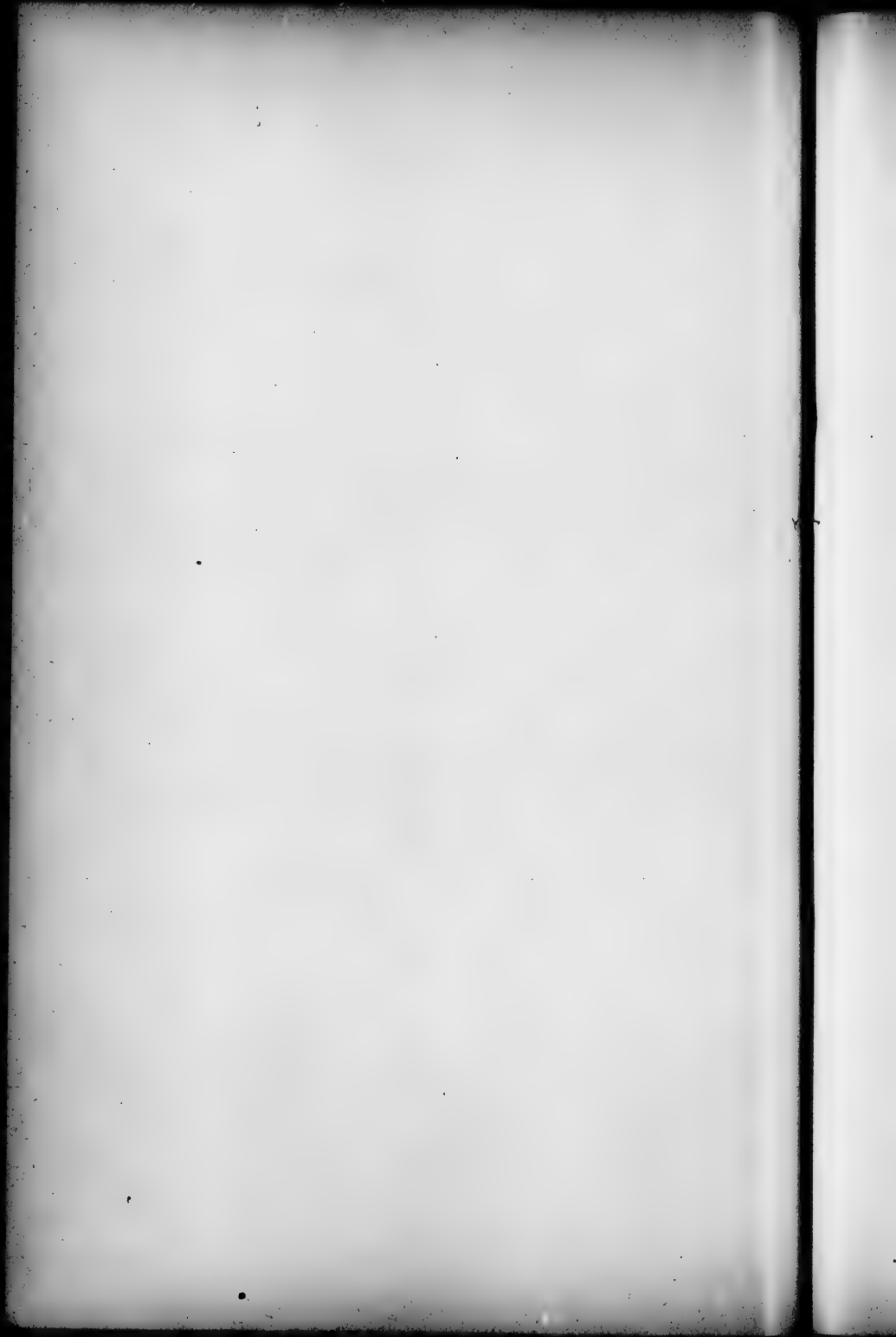
On the 22nd October, 1891, Mr. Wharton replied, proposing what now forms Article VIII of the Treaty, with the immaterial difference that it began with the words, "The respective Governments," instead of "The High Contracting Parties."

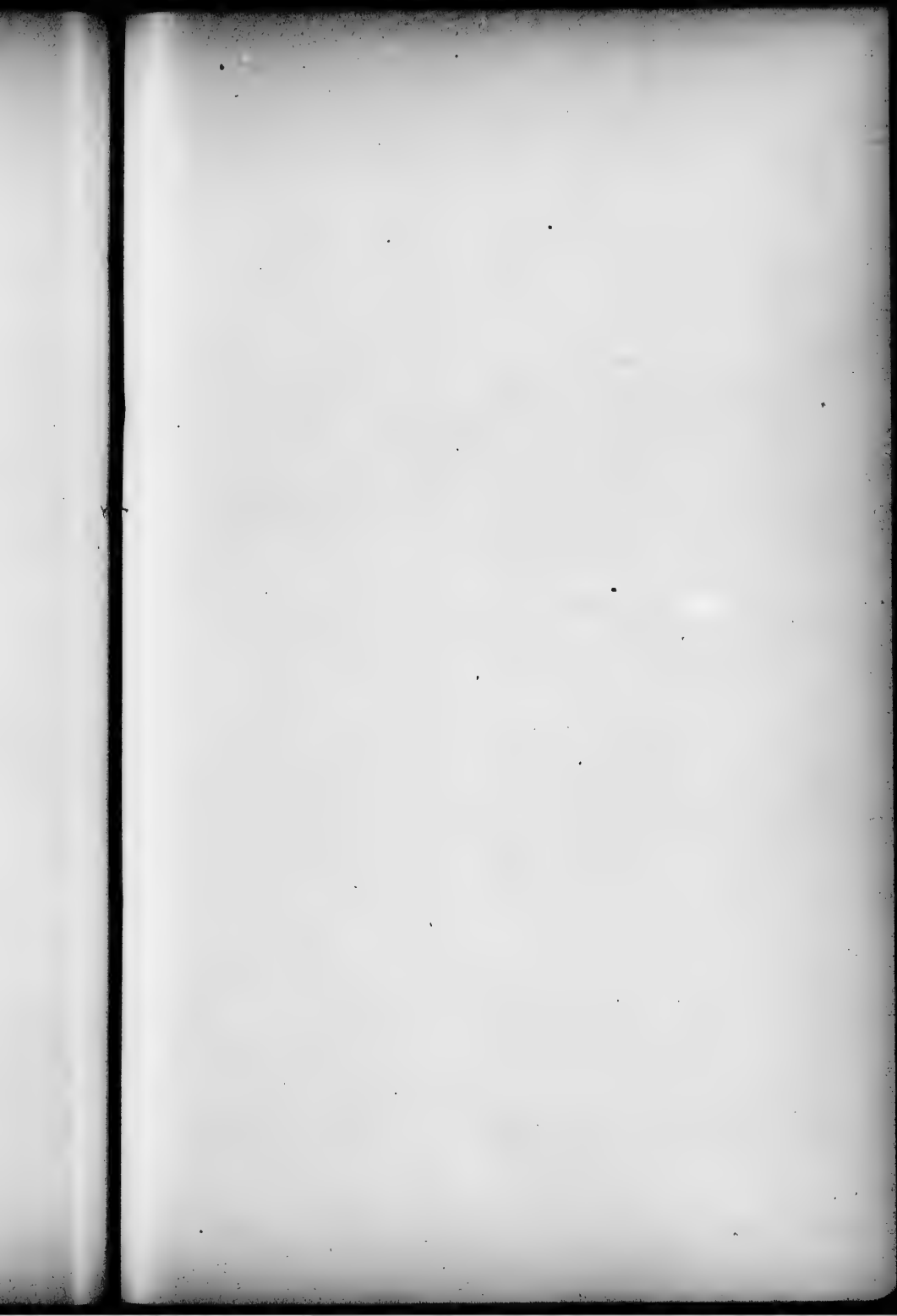
Sir J. Pauncefote accepted this by letter of the following day.

On the 31st October, 1891, Sir J. Pauncefote telegraphed to the Marquis of Salisbury as follows :—

Ibid., p. 107.

"I saw Mr. Blaine to-day on the subject of the Behring Sea Arbitration. He told me that he approved of my last proposal to the effect that the seven Arbitration Articles and the Article providing for a Joint Commission should be signed at once provisionally, with a view to their being subsequently embodied in formal documents. He added that he was ready to proceed at once to discuss with me the Articles of the Arbitration Convention which still remained unsettled respecting the appointment of Arbitrators and other matters, and he asked me whether I could give him any information as to your Lordship's views on this subject. On my expressing my inability to do so, he threw out the suggestion that it would be best, in view of all the circumstances of the case, if the Court





of Arbitrators were to be composed of English and American jurists of repute, two on each side, with an Umpire to be chosen by some foreign Power to be agreed on between the two Governments. He said he would have no objection to Holland, Sweden, France, or Switzerland. In his opinion, the appointment of English and American jurists as Arbitrators was advisable on account of the community, not only of language, but of the principles of law, of Great Britain and the United States. He asked me to inform your Lordship of this suggestion, and to ascertain the views taken of it by Her Majesty's Government."

On the 16th November, 1891, Sir J. Pauncefote again telegraphed to the Marquis of Salisbury:—

"Mr. Blaine informed me to-day that he was ready to agree to the following arrangements:—

"The Arbitrators, who must all be jurists of repute, and understand English, are to be seven in number. Two British subjects (one may be a Canadian) shall be appointed by Her Majesty's Government. Two Americans shall be appointed by the United States' Government. The other three shall be appointed by foreign Governments. He has no objection to selection by France, Holland, Sweden, Switzerland, Mexico, or Brazil.

"He thought Paris would not be objected to as place of sitting, but he could not pledge himself, as he had omitted to consult the President.

"Copies of the Articles of the Arbitration Agreement and the Joint Commission Article, as agreed on in correspondence, are being prepared for signature."

British Case,
Appendix, vol. iii,
"United States
No. 3 (1892),"
p. 116.

Then follows a correspondence set out consecutively in vol. i of the Appendix to the United States' Case, at pp. 339 to 345, in which Mr. Blaine agrees with Lord Salisbury that the necessity of any Regulations at all is a question for the Arbitrators. Lord Salisbury also reserves, but without Mr. Blaine's assent, the right of asking the Arbitrators to make the concurrence of other nations a condition of the Regulations coming into force.

On the 18th December, 1891, Sir J. Pauncefote wrote to the Marquis of Salisbury as follows:—

"With reference to my immediately preceding despatch of to-day, I have the honour to inclose herewith the text of the seven Articles of the Behring Sea Arbitration Agreement and of the Joint Commission Article, as signed by Mr. Blaine and myself."

On the 21st January, 1892, Sir J. Pauncefote accepted Mr. Blaine's proposal that the foreign Arbitrators should be chosen by France, Italy, and Sweden.

Ibid., p. 134.

Ibid., p. 139.

United States' Case, Appendix, vol. i, p. 353.

British Case, Appendix, vol. iii, "United States No. 3 (1892)," p. 143.

United States' Case, Appendix, vol. i, p. 354.

British Case, Appendix, vol. iii, "United States No. 3 (1892)," p. 151.

On the 2nd February, 1892, Mr. Blaine handed Sir J. Pauncefote a draft of the Arbitration Agreement. Her Majesty's Government apparently suggested some amendments, but these seem to have caused no difficulty, as on the 27th February Mr. Blaine wrote to Sir J. Pauncefote making an appointment for signature on the 29th, which appointment was duly kept. Ratifications were exchanged in London on the 7th May, 1892.

"Modus Vivendi" of 1891.

After some slight preliminary negotiations, Mr. Blaine wrote to Sir J. Pauncefote on the 4th May, 1891, proposing the following arrangement:—

^o Ibid., p. 8.

"The Government of the United States limits the number of seals to be killed on the islands for purposes just described to 7,500.

"The Government of the United States guarantees that no seals shall be killed in the open waters of Behring Sea by any person on any vessel sailing under the American flag, or by any American citizen sailing under any other flag.

"The Government of Great Britain guarantees that no seals shall be killed in the open waters of Behring Sea by any person on any vessel sailing under the British flag, and that no British subject shall engage in killing seals for the time agreed upon on any vessel sailing under any other flag.

"These prohibitions shall continue until the 1st day of May, 1892, within which time the Arbitrators shall render final award or awards to both Governments."

On the 3rd June, 1891, Her Majesty's Government made the following counter-proposal:—

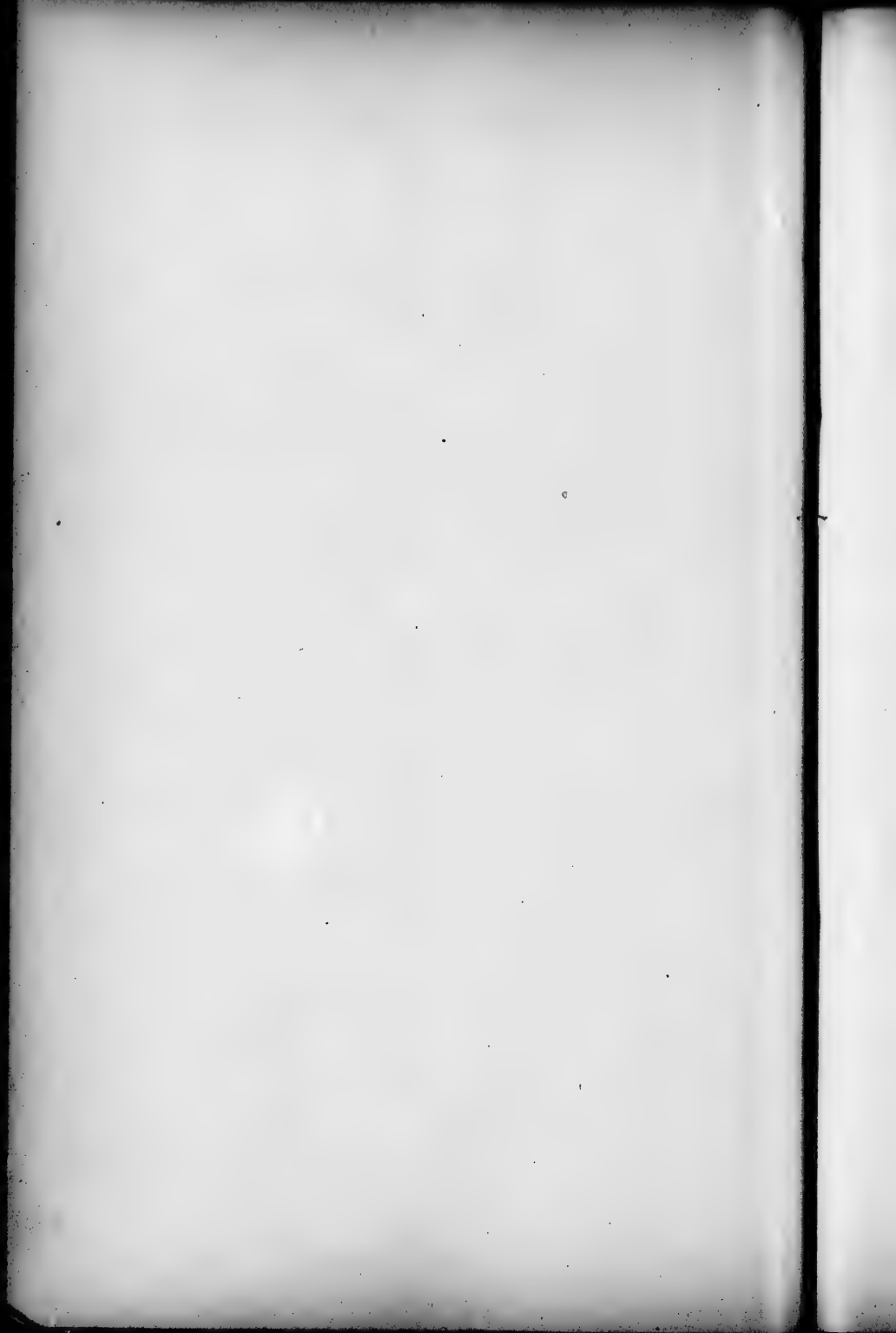
Ibid., p. 19.

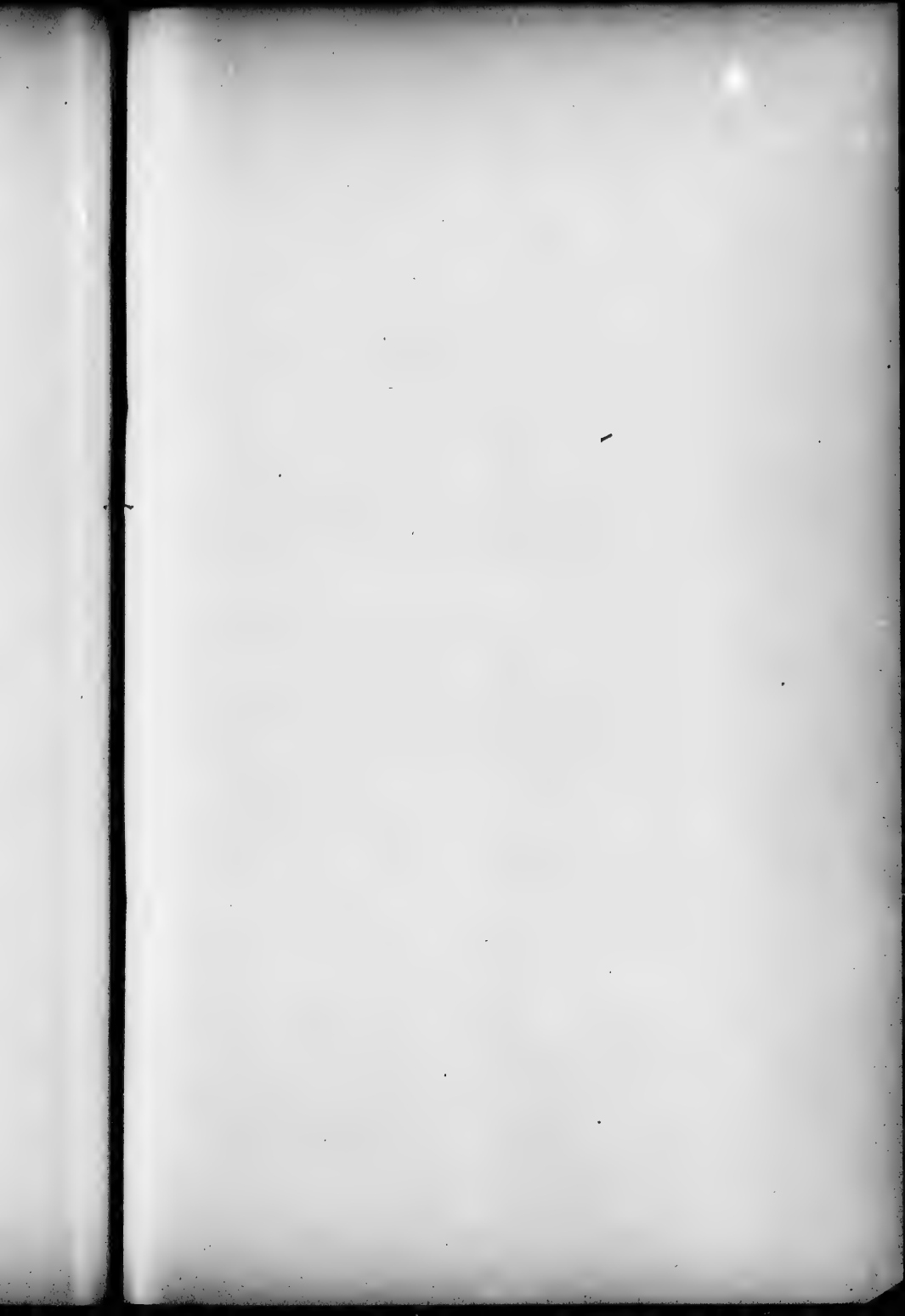
"Proposal of Her Majesty's Government for a Modus Vivendi in the Behring Sea during the present Fishery Season.

"The Governments of Great Britain and of the United States shall prohibit, until May 1892, the killing of seals in Behring Sea or any islands thereof, and will, to the best of their power and ability, insure that the subjects and citizens of the two nations respectively, and the vessels flying their respective flags, shall observe that prohibition.

"2. During the period above specified the United States' Government shall have the right to kill 7,500 seals.

"3. Consuls may, at any time, be appointed to the islands in the Behring Sea, and the United States' Government will grant an exequatur to any such Consul.





"4. Unless the assent of Russia be obtained to this Convention it shall not come into operation,

(Signed) "JULIAN PAUNCEFOTE.

"Washington, June 3, 1891."

Mr. Wharton replied on the following day:—

"Department of State, Washington,

"June 4, 1891.

"Sir,

"I am directed by the President to say, in reply to your note of the 3rd instant, conveying to the Government of the United States the response of Her Majesty's Government to the proposal of Mr. Blaine for a *modus vivendi*, relating to the seal fisheries in Behring Sea during the present season:—

British Case,
Appendix, vol. iii.
"United States
No. 3 (1892),"
p. 20.

"First. In place of the first and second subdivisions of the Agreement as submitted by you, the President suggests the following:—

"1. The Government of Great Britain shall prohibit until May 1892 the killing of seals in all that part of Behring Sea lying east, eastwardly, or south-eastwardly of the line described in Article I of the Convention between the United States and Russia of date the 30th March, 1867, and will promptly take such steps as are best calculated effectively to insure the observance of this prohibition by the subjects and citizens of Great Britain, and all vessels flying its flag.

"2. The Government of the United States shall prohibit, until May 1892, the killing of seals in that part of Behring Sea above described, and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands); and the Government of the United States will promptly take such steps as are best calculated effectually to insure the observance of this prohibition by the citizens of the United States, and the vessels flying its flag.

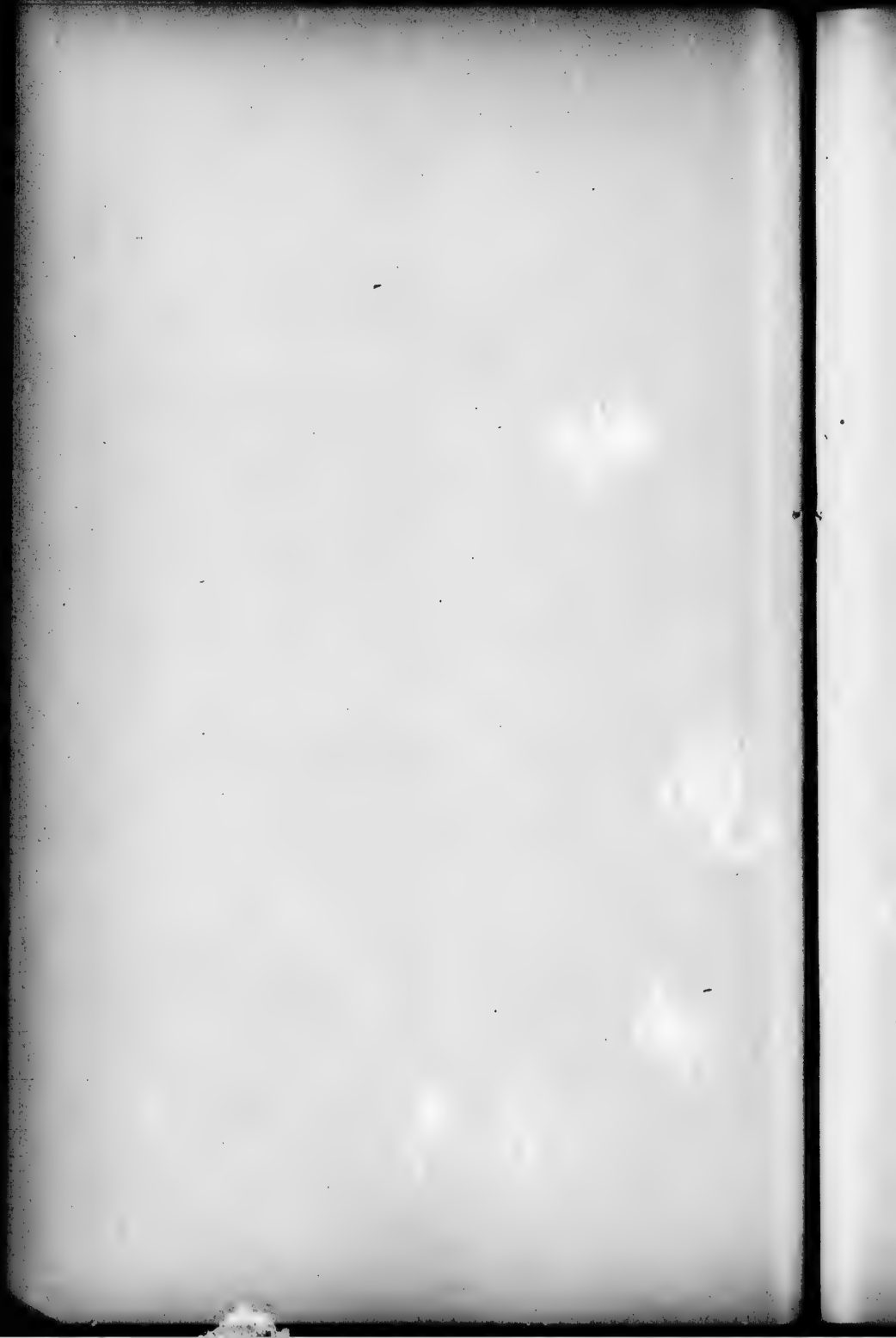
"These changes are suggested in order that the *modus vivendi* may clearly have the same territorial extent with the pending proposals for arbitration; that the stipulation for a prohibition of seal-killing upon the islands of the United States may rest upon its own order, and that the obligation of the respective Governments to give prompt and vigorous effect to the Agreement may be more clearly apparent.

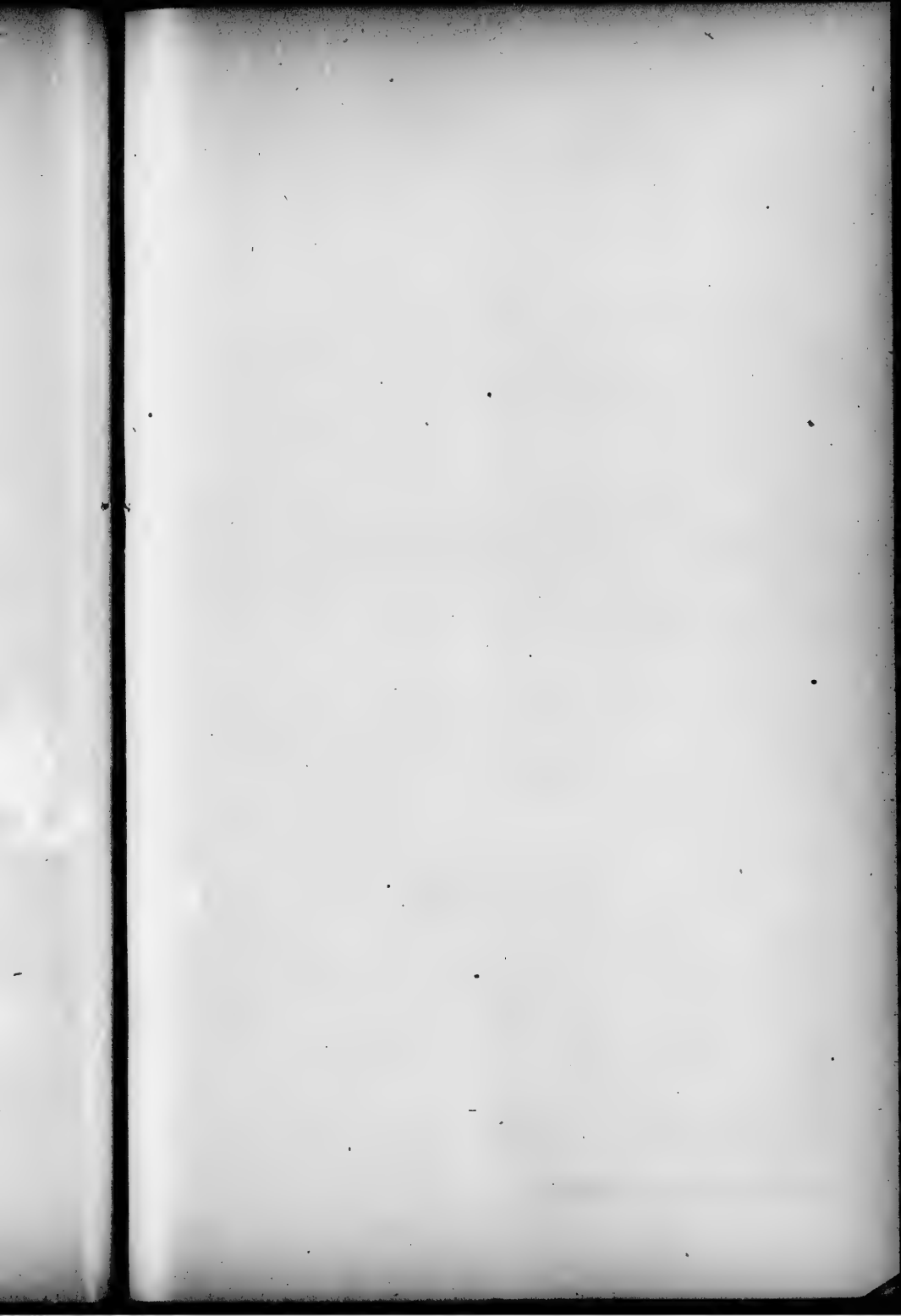
"Secondly. The pertinency of the suggestion contained in the third subdivision of Lord Salisbury's proposal is not apparent to the President. The Statutes of the United States explicitly prohibit the landing of any vessels at the Seal Islands, and the residence thereon of any person, unless specifically authorized by the Secretary of the Treasury. It is, therefore, obvious that no Consular functions could be discharged upon the islands by any Representative of Her Majesty's Government. The President regards this Law, as declaring an exception as to the residence of Consuls, within the meaning of Article IV of the Convention of Commerce and Navigation of the 22nd December, 1815, between Her Majesty's Government

and the United States. If the proposal is intended to relate to the Islands of St. Paul and St. George, and has for its object access for such Agents of the Government of Her Majesty as may be appointed to investigate facts that may be involved in the pending proposals for arbitration, or in the hearing before the Arbitrators, I am directed by the President to say that, in the event of an agreement for arbitration of the questions in dispute between Great Britain and the United States, he would be willing to extend reasonable facilities to Great Britain for the investigation at the islands of any facts involved in the controversy.

"Thirdly. The fourth clause of the proposal of Her Majesty's Government, limiting the taking effect of the *modus vivendi* upon the assent of Russia, presents what seems to the President an insuperable difficulty, as an adherence to that suggestion by Her Majesty's Government will, in his opinion, prevent the conclusion of any Agreement, and will inevitably cause such a delay as to thwart the purposes which he must suppose both Governments have had in view. He is surprised that this result did not suggest itself to Lord Salisbury, and does not doubt that it will be apparent to him on a re-examination. I am also directed to remind you that the contention between the United States and Great Britain has been limited to that part of Behring Sea eastward of the line of demarcation described in our Convention with Russia, to which reference has already been made, and that Russia has never asserted any rights in these waters affecting the subject-matter of this contention, and cannot, therefore, be a necessary party to these negotiations, if they are not now improperly expanded. Under the Statutes of the United States, the President is authorized to prohibit sealing in the Behring Sea within the limits described in our Convention with Russia, and to restrict the killing of seals on the islands of the United States; but no authority is conferred upon him to prohibit or make penal the taking of seals in the waters of Behring Sea westward of the line referred to or upon any of the shores or islands thereof. It was never supposed by any one representing the Government of the United States in this correspondence, or by the President, that an agreement for a *modus vivendi* could be broader than the subject of contention stated in the correspondence of the respective Governments.

"Negotiations for an arbitration have been proceeding between the United States and Great Britain, and if these Powers are competent to settle by this friendly method their respective rights and relations in the disputed waters upon a permanent basis, it would seem to follow that no question could arise as to their competency to deal directly with the subject for a single season. If Great Britain now insists upon impossible conditions, viz., that the conclusion of the *modus vivendi* is to be delayed until, and made contingent upon, the assent of Russia to stop the killing of seals on its own islands and in its own waters, and upon the exercise by the President of powers not conferred by law, this would be, in his opinion, a practical withdrawal





by Great Britain from the negotiations for a *modus vivendi*. This he would very much regret, and he confidently hopes that a reconsideration will enable Lord Salisbury to waive the suggestion of Russia's participation in the Agreement, and the inclusion of other waters than those to which the contention between the United States and Great Britain relates.

"In case the terms of the *modus vivendi* are agreed upon, the President suggests that a provision heretofore considered in another connection in the general correspondence, by which the naval or other duly commissioned officers of either party may arrest any offending vessel and turn it over at the nearest port of the nation whose flag it carries, as such judicial proceedings as the law provides, should be incorporated here, the more effectually to carry out the stipulations of the respective Governments to prohibit their citizens and vessels from taking seals in the specified waters of Behring's Sea.

"Having, with a view to an exigency which he has several times caused to be explained to you, promptly responded to the suggestions of your note of yesterday, the President directs me to say that he will be pleased to have from Lord Salisbury a prompt response to these suggestions.

"I am further directed by the President to say that your note of the same date referring to the conditions of the proposed arbitration, and stating the objection of Lord Salisbury to some points in the proposal of Mr. Blaine, will have the early attention of the President.

"I have, &c.

(Signed) "WILLIAM F. WHARTON,
"Acting Secretary."

On the 6th June, 1891, Sir J. Pouncefote replied, inclosing the following Memorandum:—

"Memorandum.

"Her Majesty's Government accept the proposal of the President that the *modus vivendi*, if agreed upon, should provide that the naval or other duly commissioned officers of either party may arrest any offending vessel and turn it over at the nearest port of the nation whose flag it carries, for such judicial proceedings as the law provides.

British Case,
Appendix, vol. iii.
"United States
No. 3 (1892),"
p. 26.

"By accepting this proposal, Her Majesty's Government give to the cruisers of the United States the power of supervising the conduct of British subjects in observing the proposed Agreement at sea. This is a concession which, in Lord Salisbury's opinion, entitles Her Majesty's Government to ask from the United States the corresponding power of supervising the proceedings of United States' citizens on the Seal Islands. It is on the fidelity with which the condition of not killing more than 7,500 seals is observed that the equality of the proposed Agreement depends.

"Her Majesty's Government, therefore, regard it as indispensable that they should have the right of satisfying

themselves that this condition is fully observed by citizens of the United States. If there be an objection on the part of the United States' Government to issuing an exequatur to a permanent Consul on the Seal Islands, Lord Salisbury suggests that they can under the Statute specially authorize the residence thereon of a British Agent during the present season.

"His Lordship will not insist on the condition that Russia shall be a party to the Agreement, but he must earnestly press the United States' Government to extend the prohibition to their citizens and vessels over the entire area of Behring Sea. In that case Her Majesty's Government, on their part, will similarly extend the prohibition to British subjects and vessels.

"Lord Salisbury points out that, if seal-hunting be prohibited on one side of a purely imaginary line drawn in the open ocean, while it is permitted on the other side of the line, it will be impossible in many cases to prove unlawful sealing, or to infer it from the possession of skins or fishing tackle. In conclusion, Lord Salisbury states that Her Majesty's Government consider it a matter of great importance that the two Governments should agree on the terms of arbitration at the same time as on a *modus vivendi*. The suspension of sealing is not a measure which they could repeat another year."

Mr. Wharton replied on the same day, proposing the following Agreement:—

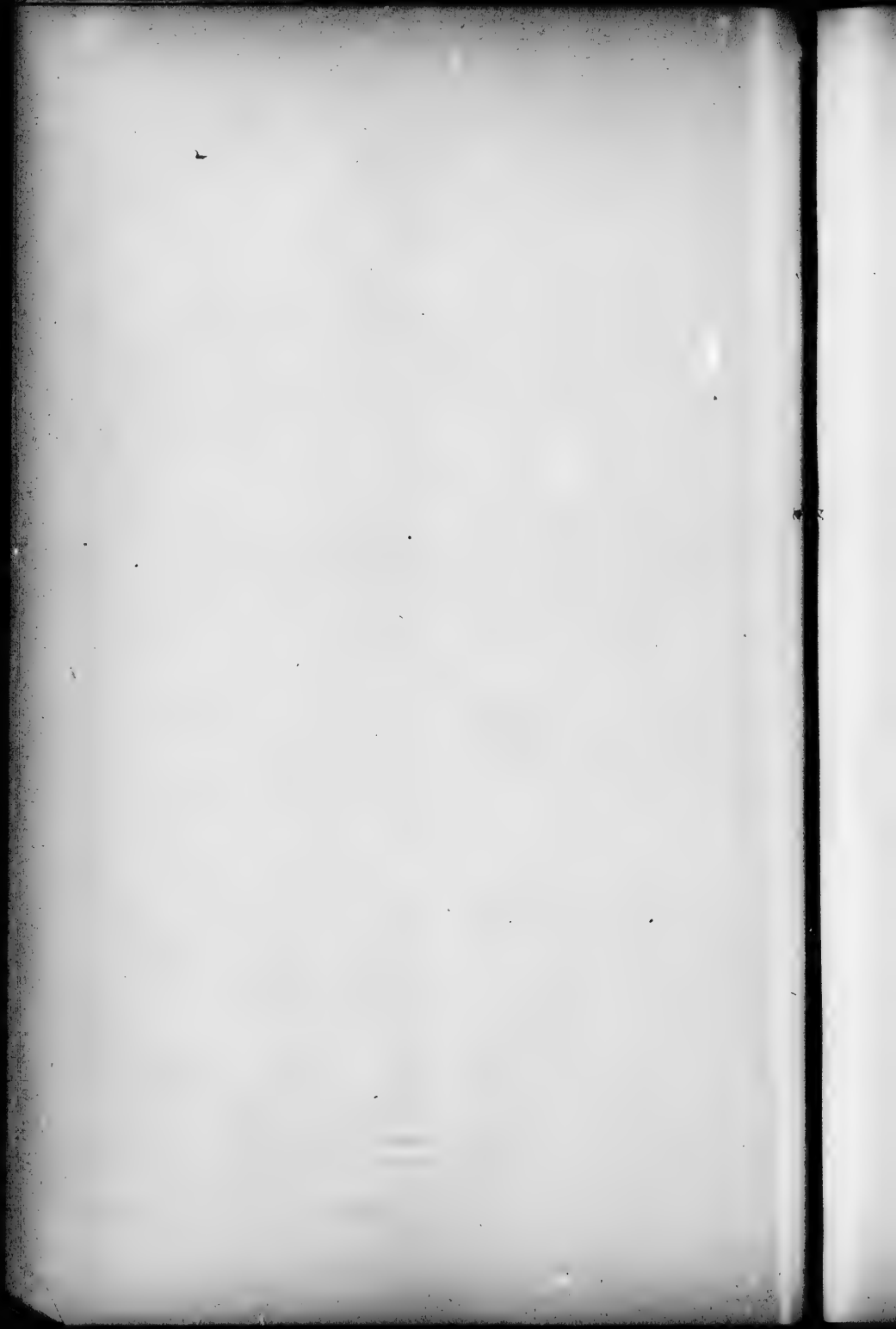
British Case,
Appendix, vol. iii.
"United States
No. 3 (1892),"
p. 27.

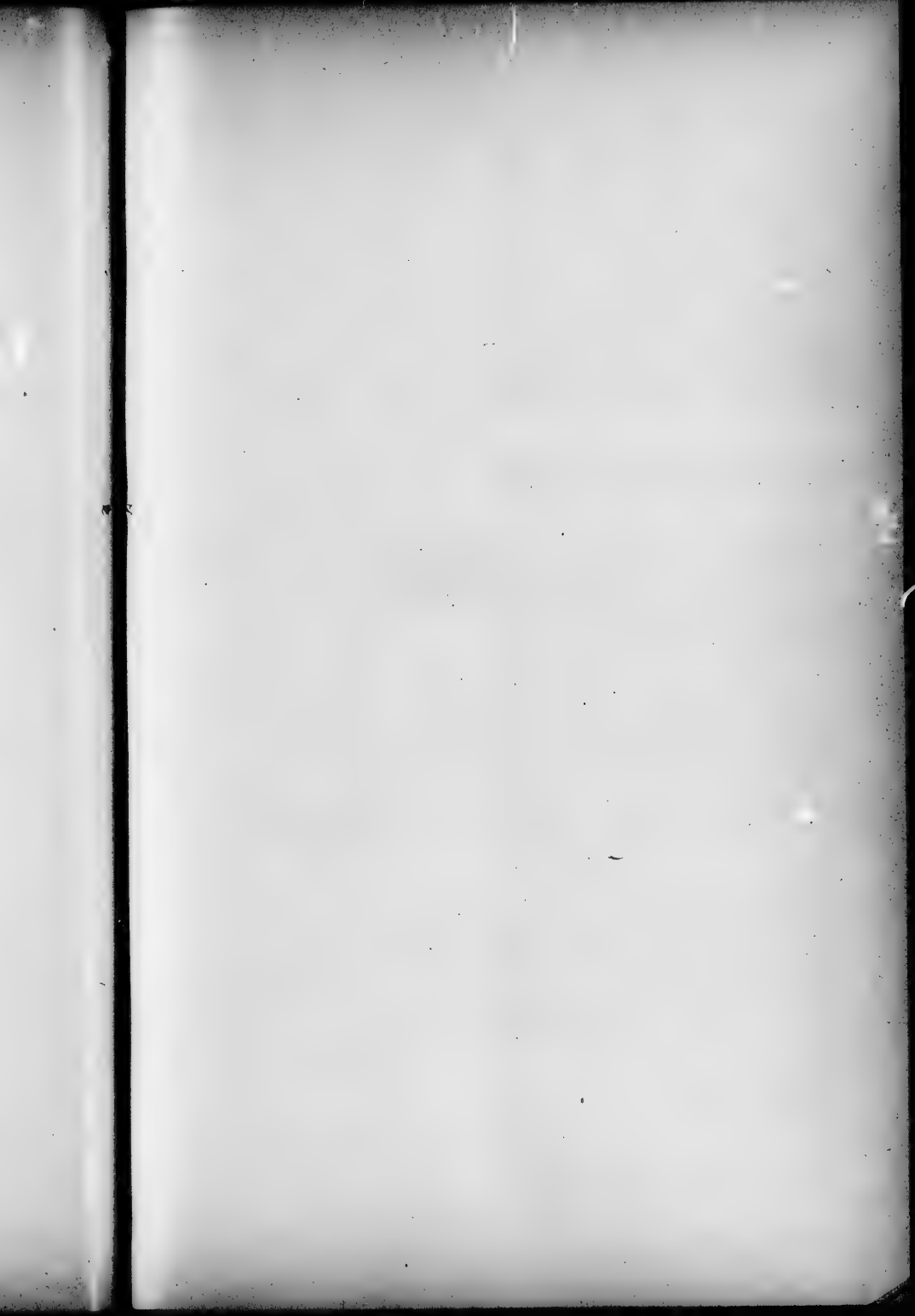
"For the purpose of avoiding irritating differences, and with a view to promote a friendly settlement of the questions pending between the Government of Great Britain on the one side, and the United States of America on the other, touching the rights of the respective nations in the Behring Sea, the following Agreement is made, which shall have no effect to limit or prejudice the rights or claims of either Power except as therein expressly stipulated and for the time therein limited:—

"1. The Government of Great Britain will prohibit until May 1892 the killing of seals in all that part of the Behring Sea lying east, eastwardly, or south-eastwardly of the line described in Article I of the Convention between the United States and Russia of the 30th March, 1867, and will promptly take such steps as are best calculated effectively to insure the observance of this prohibition by the subjects and citizens of Great Britain, and all vessels flying its flag.

"2. The Government of the United States will prohibit until May 1892 the killing of seals in that part of Behring Sea above described, and on the shores and islands thereof, the property of the United States (except that 7,500 seals and no more may be taken on the islands), and the Government of the United States will promptly take such steps as are best calculated effectively to assure the observance of this prohibition by the citizens of the United States, and the vessels flying its flag.

"3. All vessels or persons violating the laws of their





respective Governments in this regard outside the ordinary territorial limits may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong for trial and for the imposition of the penalties and forfeitures provided by law.

"4. In order to facilitate such proper inquiries as Her Majesty's Government may desire to make with a view to the presentation of the Case of that Government before Arbitrators, and in the expectation that an agreement for arbitration may ultimately be reached, it is agreed that a suitable person or persons to be designated by Great Britain will be permitted at any time, upon application, to visit or to remain upon the Seal Islands during the present sealing season, for that purpose."

On the 3rd June, 1891, Sir J. Pauncefote answered, inclosing the following draft Agreement:—

"For the purpose of avoiding irritating differences, and with a view to promote friendly settlement of the questions pending between the two Governments touching their respective rights in Behring Sea, and for preservation of seal species, the following Agreement is made without prejudice to the rights or claims of either party:—

British Case,
Appendix, vol. iii,
"United States
No. 3 (1892),"
p. 14.

"1. Her Majesty's Government will prohibit until May next seal-killing in that part of Behring Sea lying eastward of the line of demarcation described in Article I of the Treaty of 1867 between the United States and Russia, and will promptly use best efforts to insure observance of prohibition by British subjects and vessels.

"2. If the United States' Government will prohibit seal-killing for the same period in the same part of Behring Sea, and on the shores and islands thereof the property of the United States (in excess of 7,500 to be taken on the islands as food skins, and not for tax and shipment), and will promptly use best efforts to insure observance of prohibition by United States' citizens and vessels.

"3. Every offending vessel or person may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offence and impose the penalties for the same. The witnesses and the proofs necessary to establish the offence shall also be sent with them.

"4. In order to facilitate such proper inquiries as Her Majesty's Government may desire to make, with the view to the presentation of the Case of that Government before Arbitrators, and in expectation that an agreement for arbitration may be arrived at, it is agreed that suitable persons, designated by Great Britain, will be permitted at any time, upon application, to visit, or to remain upon, the

Seal Islands during the present sealing season for that purpose.

"5. A Commission of four experts, two nominated by each Government, and a Chairman nominated by the Arbitrators, if appointed, and if not by the aforesaid Commissioners, shall examine and report on the following question :—

"What international arrangements, if any, between Great Britain, United States, and Russia, or any other Power, are necessary for the purpose of preserving the fur-seal race in the Northern Pacific from extermination ?

"6. The Government of the United States will join with that of Her Majesty in requesting Russia to forbid her subjects from sealing to the east of the line indicated in Article 1 of the present Agreement until the 1st May, 1892."

On the 9th June, 1891, Mr. Wharton wrote proposing the *modus vivendi* actually adopted.

In his letter he said :—

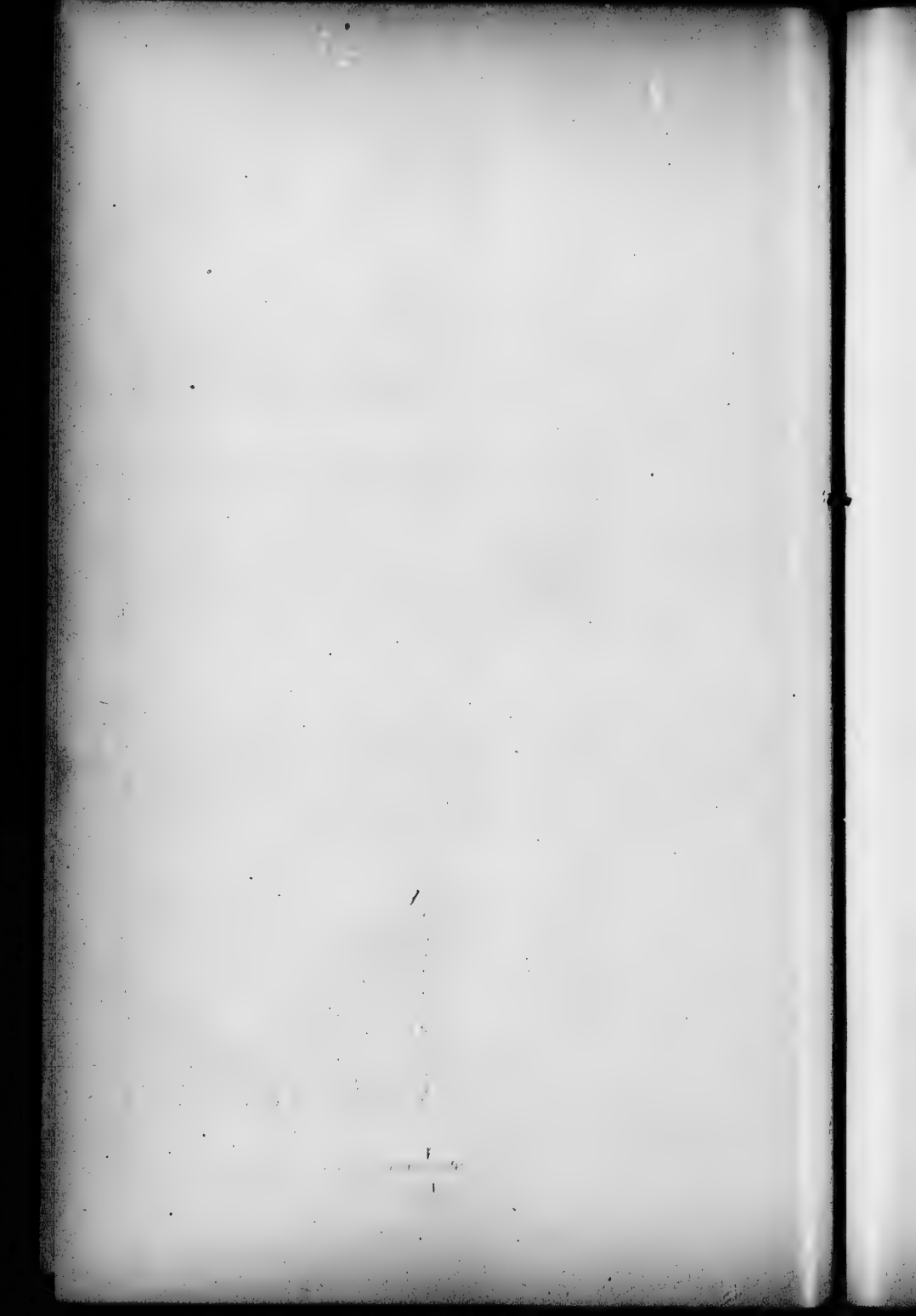
British Case,
Appendix, vol. iii.
"United States
No. 3 (1892),"
p. 32.

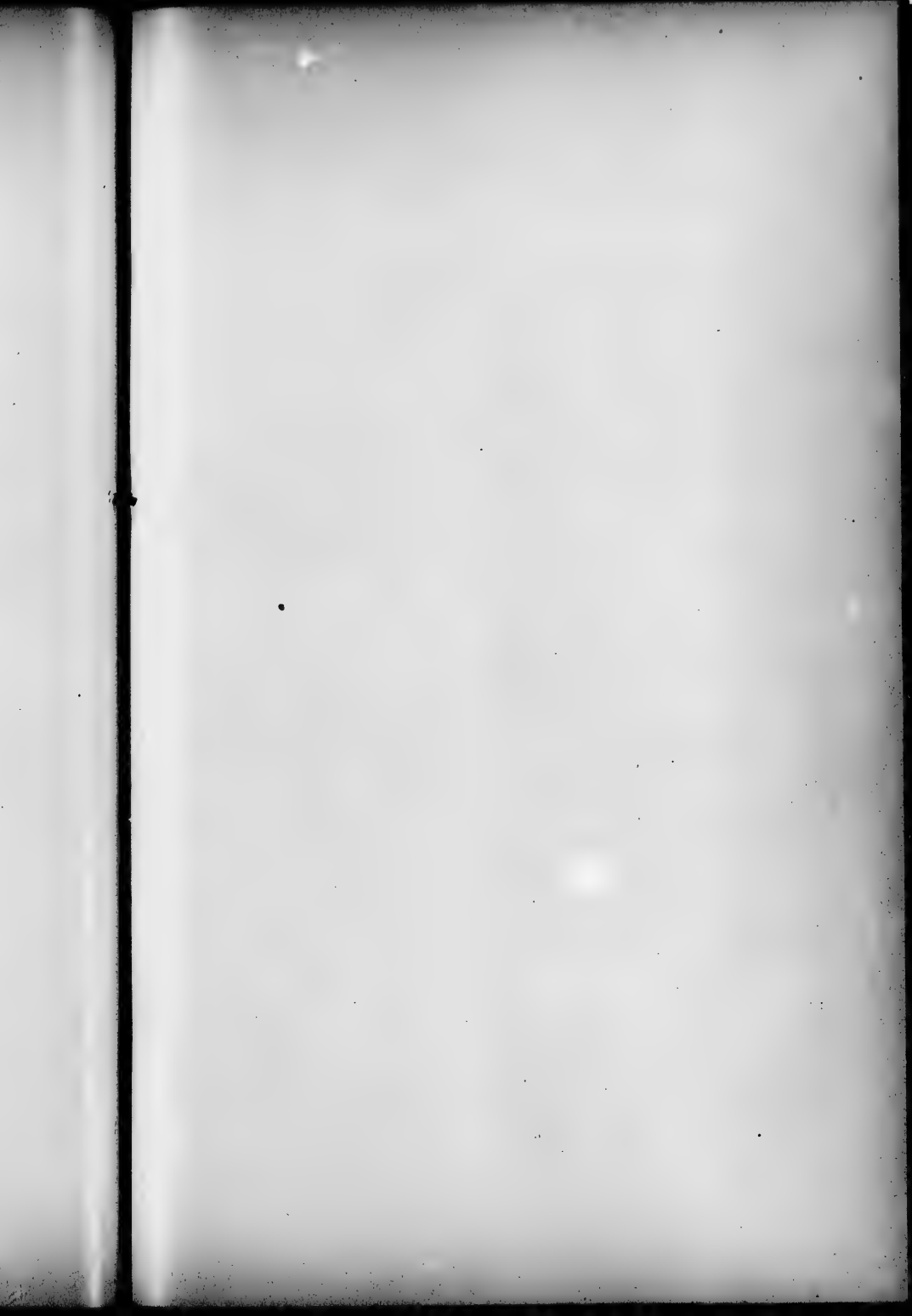
"As to the third clause of your proposition, I am directed to say that the contention between the United States and Great Britain has relation solely to the respective rights of the two Governments in the waters of Behring Sea outside of the ordinary territorial limits, and the stipulations for the co-operation of the two Governments during this season have, of course, the same natural limitation.

"This is recognized in Articles 1 and 2 of your proposal, for you will observe that the obligation assumed by Her Majesty's Government is to prohibit seal-killing in a certain part of Behring Sea, whereas the obligation assumed in the second Article by the Government of the United States is to prohibit seal-killing in the same part of Behring Sea, and the shores and islands thereof the property of the United States.

"The killing, therefore, of seals on the islands, or within the territorial waters of the United States, falls only within the prohibition of this Government. His Lordship will also see that it is altogether beyond the power of the President to stipulate that an offence committed in the undisputed territory of the United States against its laws shall be triable only in the Courts of another nation. The extension of this clause to the territory and territorial waters of the United States, therefore, involves an insuperable legal difficulty on our part, and a concession which no independent Government could be expected to make. The mutual police which is to be stipulated for could not in the nature of things apply to the territorial waters within the undisputed and exclusive jurisdiction of either."

The following is the Agreement :—





"Agreement between the Government of Her Britannic Majesty and the Government of the United States for a Modus Vivendi in relation to the Fur-seal Fisheries in Behring Sea."

British Case; Appendix, vol iii.
"United States No. 3 (1892)," p. 39.

"For the purpose of avoiding irritating differences, and with a view to promote the friendly settlement of the questions pending between the two Governments touching their respective rights in Behring Sea, and for the preservation of the seal species, the following Agreement is made without prejudice to the rights or claims of either party:—

"1. Her Majesty's Government will prohibit, until May next, seal-killing in that part of Behring Sea lying eastward of the line of demarcation described in Article I of the Treaty of 1867 between the United States and Russia, and will promptly use its best efforts to insure the observance of this prohibition by British subjects and vessels.

"2. The United States' Government will prohibit seal-killing for the same period in the same part of Behring Sea, and on the shores and islands thereof the property of the United States (in excess of 7,500 to be taken on the islands for the subsistence and care of the natives), and will promptly use its best efforts to insure the observance of this prohibition by United States' citizens and vessels.

"3. Every vessel or person offending against this prohibition in the said waters of Behring Sea outside of the ordinary territorial limits of the United States may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offence and impose the penalties for the same. The witnesses and proofs necessary to establish the offence shall also be sent with them.

"4. In order to facilitate such proper inquiries as Her Majesty's Government may desire to make, with a view to the presentation of the Case of that Government before Arbitrators, and in expectation that an Agreement for arbitration may be arrived at, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or to remain upon the Seal Islands during the present sealing season for that purpose.

"Signed and sealed in duplicate at Washington, this 15th day of June, 1891, on behalf of their respective Governments, by Sir Julian Pauncefote, G.C.M.G., K.C.B., Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, and William F. Wharton, Acting Secretary of State of the United States

(Signed)

"JULIAN PAUNCEFOTE

"WILLIAM F. WHARTON."

"*Modus Vivendi*" of 1892.

On the 24th February, 1892, Mr. Blaine wrote the following letter to Sir J. Pauncefote:—

"Department of State, Washington,
February 24, 1892.

"Sir,

British Case,
Appendix, vol. iii.
"United States"
No. 3 (1892),
p. 153.

"I am in receipt of your note of the 19th. You therein inform me that Lord Salisbury cannot express any opinion on the subject of the *modus vivendi* until he knows what we desire to propose.

"I am glad to hear that Lord Salisbury contemplates a *modus*, for it is obvious that it is impossible to conclude the arbitration within the time originally set. Indeed, we shall hardly be able to enter upon it. The delays have been much greater on the part of Great Britain than on the part of the United States.

"In reply to your inquiry, the President suggests that the *modus* should be much the same as last year in terms, but that it should be better executed. It was very ineffective last year, for there was a larger number of seals in Behring Sea taken then than ever before. The vessels had already set out before the *modus* was agreed to, and it was impossible to give them notice in time to avoid their taking seals. Her Majesty's Government did not take such efficient measures as an earlier date this year will render practicable.

"If Her Majesty's Government would make their efforts most effective, the sealing in the North Pacific Ocean should be forbidden, for there the slaughter of the mothers heavy with young is the greatest. This would require a notice to the large number of sealers which are preparing to go forth from British Columbia. The number is said to be greater than ever before, and without any law to regulate the killing of seals the destruction will be immense. All this suggests the great need of an effective *modus*. Holding an arbitration in regard to the rightful mode of taking seals while their destruction goes forward would be as if, while an arbitration to the title to timber-land were in progress, one party should remove all the trees.

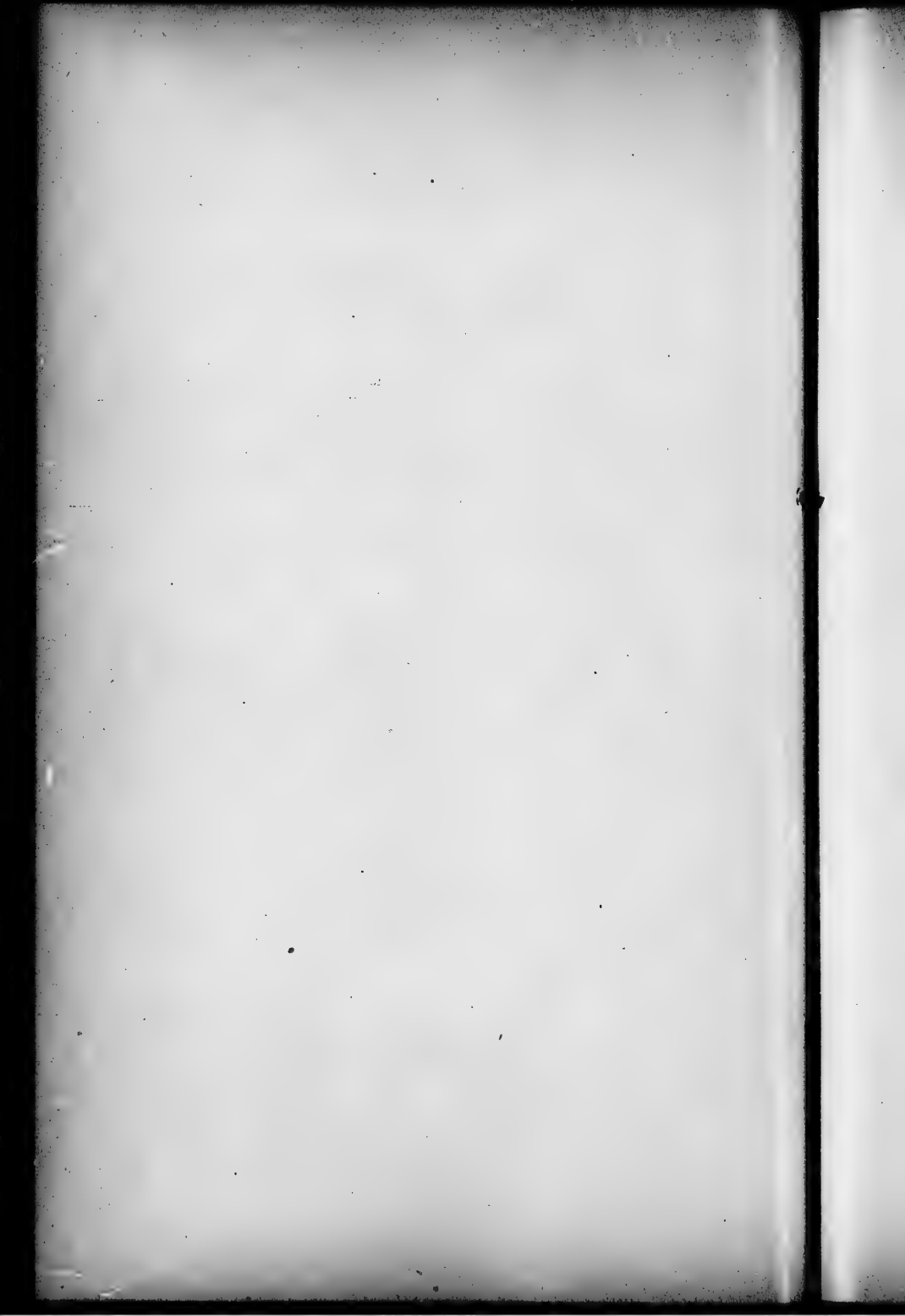
"I shall have to ask you to transmit the contents of this note to Lord Salisbury by telegraph. Every day that is lost now entails great trouble upon both Governments.

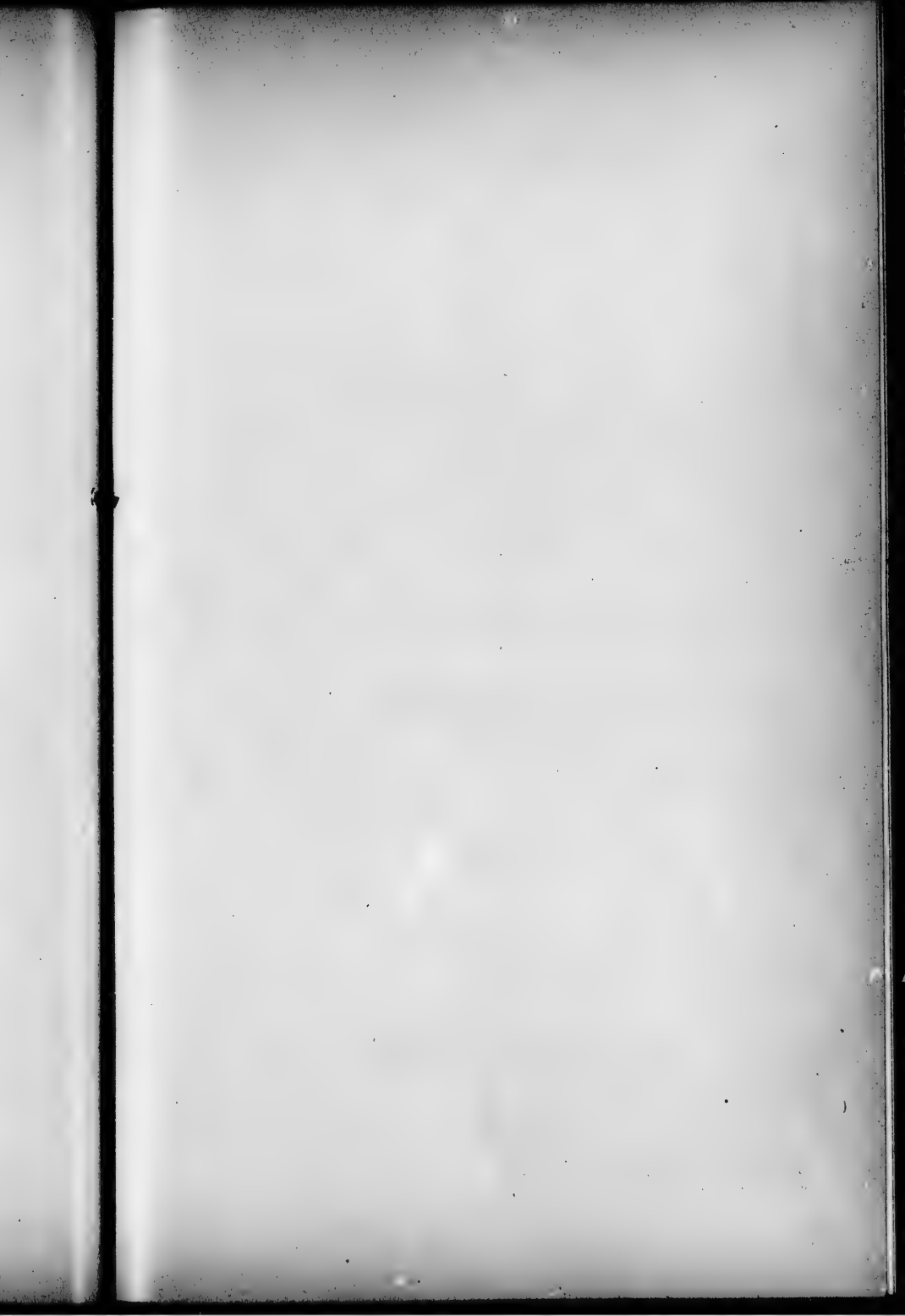
"I have, &c.

(Signed) "JAMES G. BLAINE."

On the 29th February, 1892, Sir J. Pauncefote wrote Mr. Blaine a letter of which the following are the material paragraphs:—

"As regards the necessity for another *modus vivendi*, Her Majesty's Government consented to that measure last year solely on the ground that it was supposed that there would be danger to the preservation of the seal species in Behring Sea unless some interval in the slaughter of seals were prescribed both at sea and on land. But Her





Majesty's Government have received no information to show that so drastic a remedy is necessary for two consecutive seasons. On the contrary, the British Commissioners on the Behring Sea Joint Commission have informed Her Majesty's Government that, so far as pelagic sealing is concerned, there is no danger of any serious diminution of the fur-seal species as a consequence of this year's hunting.

"Nevertheless, Lord Salisbury would not object, as a temporary measure of precaution for this season, to the prohibition of all killing at sea within a zone extending to not more than 30 nautical miles around the Pribiloff Islands, such prohibition being conditional on the restriction of the number of seals to be killed for any purpose on the islands to a maximum of 30,000.

"Lord Salisbury, referring to the passage in your note in which you compare the case to an arbitration about timber-land from which the trees are being removed by one of the parties, observes that he hardly thinks the simile quite apposite. His Lordship suggests that the case is more like one of arbitration respecting the title to a meadow. While the arbitration is in progress, he adds, we cut the grass, and quite rightly, for the grass will be reproduced next year, and so will the seals."

In another letter to Mr. Blaine, dated the 7th March, 1892, Sir J. Pauncefote said:—

"Lord Salisbury's proposal of a 30-mile radius around the Pribiloff Islands within which no sealing should be allowed is a judicious temporary measure of precaution pending the establishment of permanent Regulations for the fishery as a whole. It is a somewhat larger proposal than that which you originally made to me on the 16th March, 1891, and which was for a similar radius of 25 miles only.

United States' Case, Appendix, vol. i, p. 356.

"The reason why you subsequently abandoned that 'radius' proposal is stated in your note to me of the 4th May, 1891. That reason was not that such a radius would be ineffectual, but that 'it might possibly provoke conflict in the Behring Sea.'"

A letter from Mr. Wharton to Sir J. Pauncefote dated the 8th March, 1891, contains the following passages:—

"The United States claims an exclusive right to take seals in a portion of the Behring Sea, while Her Majesty's Government claims a common right to pursue and take the seals in those waters outside a 3-mile limit. This serious and protracted controversy, it has now been happily agreed, shall be submitted to the determination of a Tribunal of Arbitration, and the Treaty only awaits the action of the American Senate. The judgment of the Arbitration Tribunal cannot, however, be reached and stated in time to control the conduct of the respective

British Case, Appendix, vol. III.
"United States No. 2 (1892)," p. 181.

Governments, and of their citizens during the sealing season of 1892; and the urgent question now is, What does good faith, to say nothing of international comity, require of the parties to the arbitration? If the contention of this Government is sustained by the Arbitrators, then any killing of seals by the Canadian sealers during this season in these waters is an injury to this Government in its jurisdiction and property. The injury is not measured by the skins taken, but affects the permanent value of our property.

British Case,
Appendix, vol. iii.
"United States
No. 2 (1893),"
p. 163.

"The President cannot agree, now that the terms of arbitration have been settled, that the restrictions imposed shall be less than those which both Governments deemed to be appropriate when it was still uncertain whether an early adjustment of the controversy was attainable. He therefore hopes that Her Majesty's Government will consent to renew the arrangement of last year with the promptness which the exigency demands, and to agree to enforce it by refusing all clearances to sealing-vessels for the prohibited waters, and by recalling from those waters all such vessels as have already cleared.

"This Government will honourably abide the judgment of the High Tribunal which has been agreed upon, whether that judgment be favourable or unfavourable; and will not seek to avoid a just responsibility for any of its acts which by that judgment are found to be unlawful. But certainly the United States cannot be expected to suspend the defence, by such means as are within its power, of the property and jurisdictional rights claimed by it pending the arbitration, and to consent to receive them from that Tribunal, if awarded, shorn of much of their value by the acts of irresponsible persons."

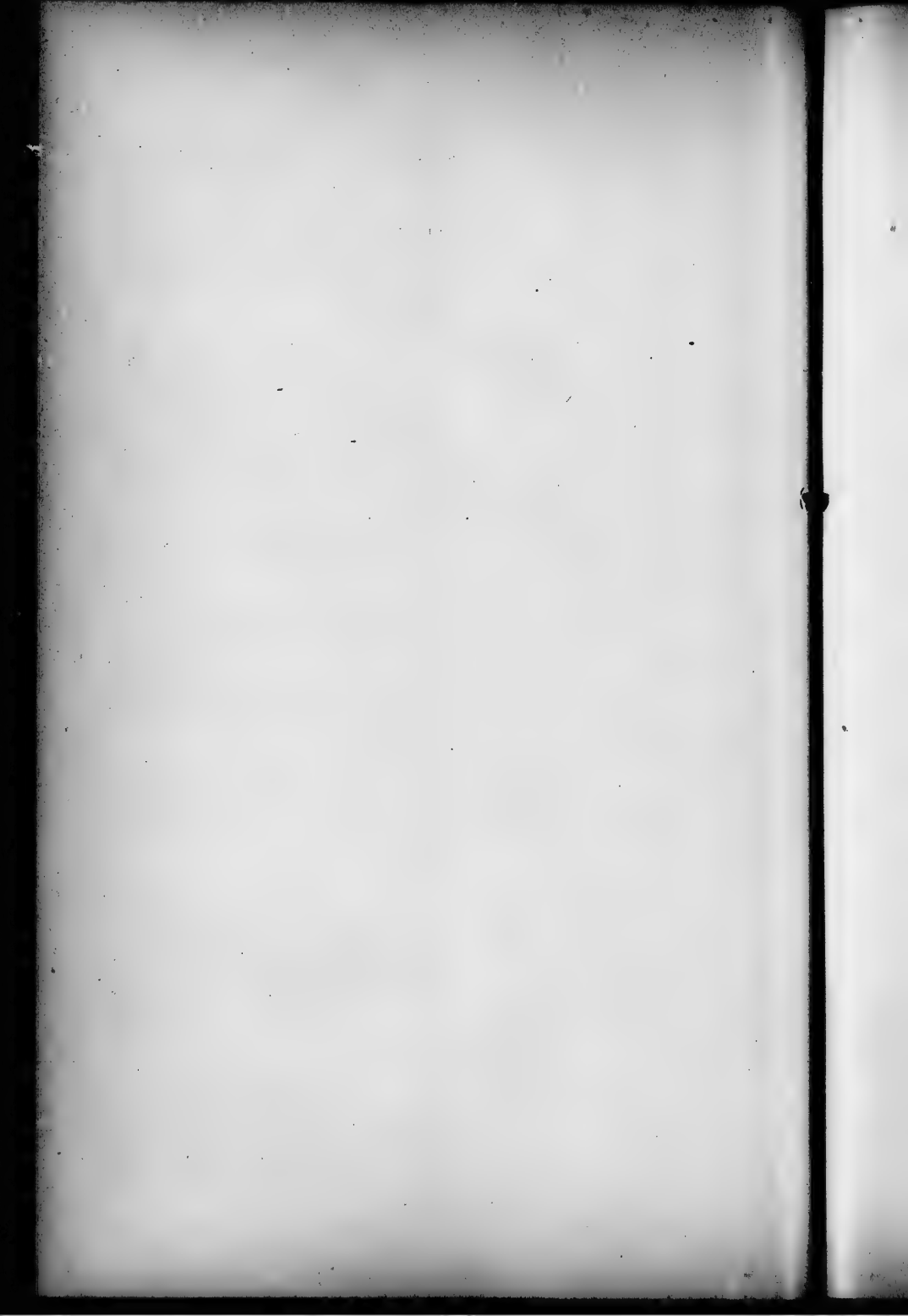
United States'
Case, Appendix,
vol. i, p. 300.

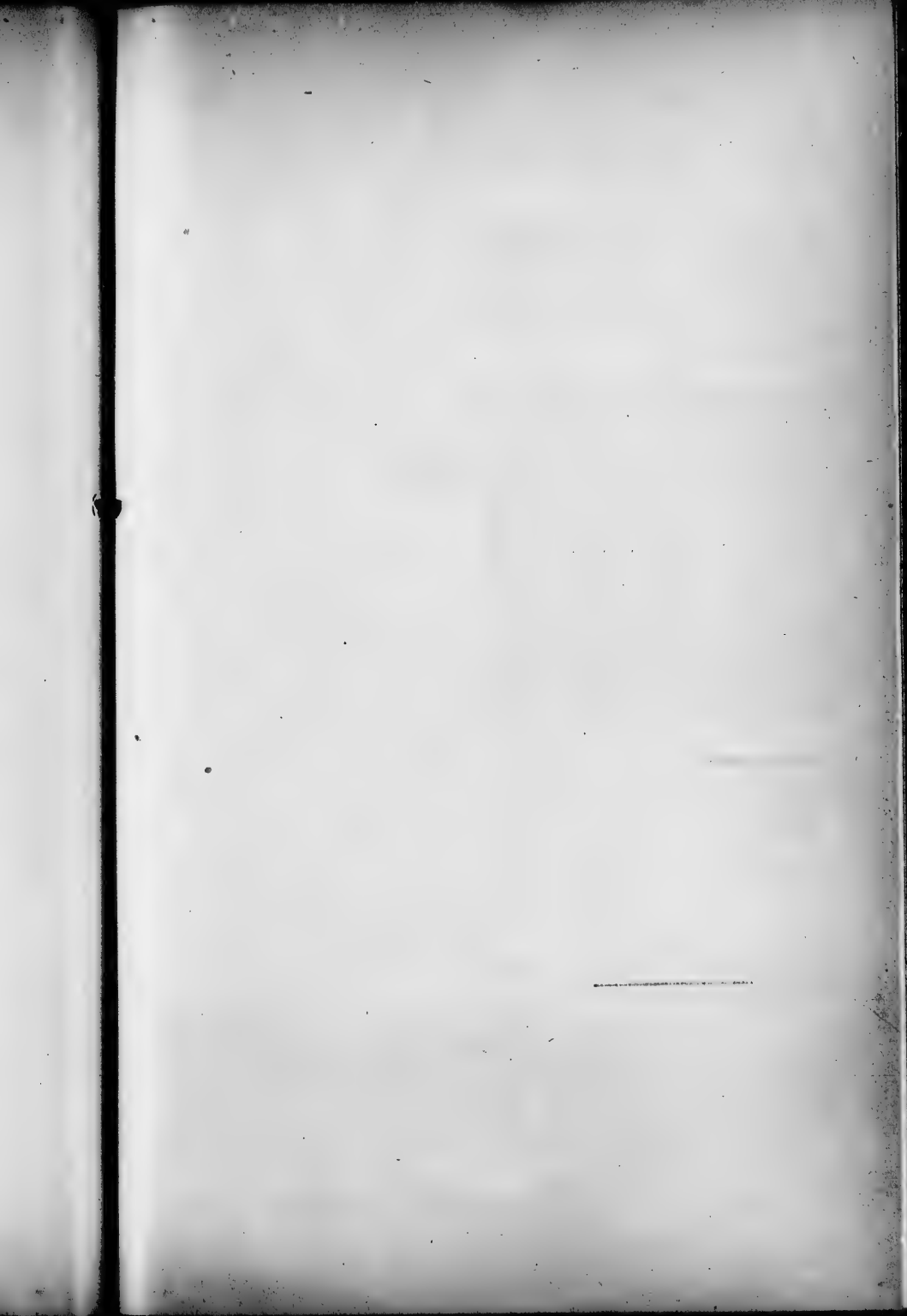
After a letter from Sir J. Pauncefote to Mr. Wharton dated the 19th March, 1892, Mr. Wharton replied on the 22nd, pressing for a renewal of the *modus vivendi* of 1891. In his note he says:—

Ibid., p. 361.

"For it must not be forgotten that if Her Majesty's Government proceeds during this sealing season upon the basis of its contention as to the rights of the Canadian sealers, no choice is left to this Government but to proceed upon the basis of its confident contention that pelagic sealing in the Behring Sea is an infraction of its jurisdiction and property rights. His Lordship will hardly fail to see this.

"The President directs me to say, in conclusion, that the *modus* of last year is the least that this Government can accept. In reason, the restraints, after a Treaty of Arbitration, should be more absolute, not less. He does not desire to protract this discussion, and having now, in the most friendly spirit, submitted the considerations which support the just demand of this Government that the





property which is the subject of an agreed arbitration shall not be subject to spoliation pending the arbitration, he expresses the hope that Lord Salisbury will give a prompt and friendly assent to renew the *modus*.

"The President will hear with regret that Her Majesty's Government continues to assert a right to deal with this subject precisely as if no provision had been made for a settlement of the dispute; and, in that event, this Government, as has already been pointed out, will be compelled to deal with the subject upon the same basis, and to use every means in its power to protect from destruction or serious injury property and jurisdictional rights which it has long claimed and enjoyed."

Sir J. Pauncefote's answer, dated the 26th March, 1892, contained the following passage:—

"Her Majesty's Government think that the prohibition of sealing, if it stands alone, will be unjust to British sealers if the decision of the Arbitrators should be adverse to the United States. They are, however, willing, when the Treaty has been ratified, to agree to an arrangement similar to that of last year, if the United States' Government will consent that the Arbitrators should, in the event of a decision adverse to the United States, assess the damages which the prohibition of sealing shall have inflicted on British sealers during the pendency of the arbitration; and, in the event of a decision adverse to Great Britain, that they should assess the damages which the limitation of a slaughter shall, during the pendency of the arbitration, have inflicted on the United States or its lessees."

United States' Case, Appendix, vol. i, p. 363.

This was acted on.

14
N. A. Argument

*Memorandum on the Argument of the
United States in its relation to Inter-
national Law.*

THERE is, I think, very little to be added in the way of general principles to those upon which, from what dropped from Sir C. Russell in the course of conversation, I gather that he and Sir R. Webster rely. If in the circumstances I write at all, it is on the off-chance that while applying them I may happen to say something that has not already presented itself in exactly the same light.

The American Argument may, perhaps, be resumed in the following propositions:—

1. That international law derives its authority and its doctrines directly from natural law, in such sense that the latter is capable, in new cases not within the scope of accepted international rules, of supplying the grounds of an authoritative judgment.
2. That according to natural law, and upon the analogies of municipal law, fur-seals, living under the conditions of their actual existence, are susceptible of being made, and are, in fact, subjects of property.
3. That a State is permitted, under its general rights of self-defence, to protect such property when in the high seas.

No one of these propositions appears to me to admit of justification. The only difficulties in dealing with them which present themselves arise from the remoteness of the American claims from anything with which international law has hitherto had to do, and from the lengthiness of the statement which would have to be made in order to show that in the passages quoted from various authors the writers had nothing in their mind which would justify the particular application which is made of their

words. I can only, of course, touch cursorily upon the various matters involved.

1. It is not the case that "natural law"—or, in other words, so much of morals as is applicable to the relations of States—is universally agreed to be a direct and immediate source of international law, or of practical rules between States where international law is wanting.

I cannot charge my memory with any international controversy which has been decided on that basis; and, except Pufendorf, I can remember no writer of authority who deduces international law immediately from natural law. Jurists and statesmen alike have been content to found their concrete doctrine upon *axiomata media*—upon the recognized principles of the law itself. Grotius even, almost the originator of the law as he was, and to a great extent, therefore, obliged to rest upon abstract principles of morals, was careful to separate the law of nations from natural law, and to point out that the former acquires its force by the will of nations and reposes on their agreement. (Book I, ch. 1, §§ xiii and xiv.) In opposition to Pufendorf, Bynkershoek and Wolff, than whom no writers had greater authority before the time of Vattel, expressly reject natural law. Among more recent authors, Heffter says that international law is founded on necessity and the material needs of States, and is corrected in its development by morals. Calvo "*reconnait que l'idée générale de justice peut modifier au bien et au profit commun les relations des États, toutefois*" he "*s'attache par préférence aux principes définis par les Traités, aux règles qui se déduisent naturellement et logiquement des conventions particulières en des divers cas résolus dans la pratique, enfin à la jurisprudence consacrée.*"

It is true that a very large number of writers base their systems on natural law; but it will be found that in practice, like Vattel, they admit that it has to undergo modifications in accordance with the existing nature of the relations between States before it can be applied. It has been used to test the relative value of conflicting usages or tendencies of doctrine; it has been employed to give formal expression to a growing custom; it has been cited to support fresh abstract theories placed before the world for acceptance; but no attempt has hitherto

been made to impose it upon States as a direct source of duty, obedience to which is implied in the obligation under which all civilized States lie to obey international law.

Modern international law has long passed the point at which this would have been possible; it is now, and long has been, a body of derivative principles and concrete rules, formed by the action and reaction on each other of custom, of moral feeling, and of convenience. It is only capable of modification either by the slow growth of fresh custom, under the influence of its other factors—morals and convenience—or by express agreement among the nations. In matters involving new principles, or large extension of principle, or fresh practices, no way exists of quickly changing the concrete rules of existing law other than the universal agreement of civilized States; and to nothing else than these rules is obedience due. [Although the United States, almost alone of civilized countries, has not subscribed the Declaration of Paris, it would be interesting to know whether she would admit herself to be precluded in law from using privateers in the event of war.]

I have not been able to refresh my memory by reference to most of the books cited in the American Argument, but I feel confident that in many cases the written doctrine or view, taken as a whole, does not correspond with the impression produced by the extract, or by the portion of the Argument to which the reference is appended.

I may take this opportunity of saying that the authorities cited in the Argument are of a curiously miscellaneous nature. Several are very second rate. Some are such that it is almost an insult to the Tribunal to quote them. Not knowing, for example, anything about Felice, Plocque, and La Tour, I have made inquiries. Of the first I can learn nothing whatever. As to the second, I hear that the work cited was a student's "thèse" for the "Doctorat"—absolutely without value. La Tour's book was offered to the Institut in the hope of being "couronné"—no very great honour—it was not good enough, and he was awarded a compassionate prize in money. It is also wholly valueless. Testa is absolutely without authority—very poorly done. In other cases, such as that of Massé (p. 26 of the Argument, note), a book may be good in its

own province, but useless from the speculative point of view.

The references to books need both to be tested and sifted.

2. Discarding natural law, the next question is, Does international law support the contention of the United States, either directly or through the analogies of municipal law?

Assuming for a moment that fur-seals can be a subject of property, there can be no question that the Argument of the United States gives a wholly illegitimate extension to the right of self-protection as understood in international law, and for the purpose of doing so mixes up a variety of rights of action on the part of States which are justified by very various reasons.

These must be eliminated before the true proportions of the rights of self-protection, in the sense of State action or jurisdiction outside the territory of the State in time of peace, can be clearly seen.

Practices bearing on neutrals, which are exercised by belligerents, may first be put aside as destitute of any real analogy with the protection of fur-seals on the high seas. Essentially, belligerent rights rest on that genuine emergency of danger which is the true basis of all exceptional self-preservation^{ve} acts, and upon the consent which, in consideration of that danger, is given by neutral States. Although the result of a war would not in very many cases be seriously affected by ports being open, or by the entry of contraband, there are of course other cases in which the absence of blockade or free access of contraband would—as in the case of the American Civil War—in all probability change its issue. A neutral country cannot take upon itself to decide in which instances one or other state of things would exist. It consents, therefore, that the belligerents shall act freely; and the more so that as it is bound to show equal friendliness to both sides, it cannot countenance the rendering, on the part of its subjects, of what may in effect be assistance in the war.

It may be noted that, historically looked at, the present privileges of belligerents are the atrophied remnants of usages of another and more violent description, which could in no way be considered as simply protection. The right, for example, of passage through a foreign State for purposes of

5.
invasion, with all the onerous attendant incidents to neutral subjects, used formerly to be fully conceded. The present rights of belligerents are those which remain after customs which were inconsistent with the independence or essential convenience of neutral States have been cut away.

Piracy, again, must be excluded. I am unable to remember any writer who plants jurisdiction over pirates on the ground of self-protection. The universal and sufficient mode of accounting for it is that the pirate is a noxious animal, whom everybody, by general consent of nations, is at liberty to repress. The consent is there, and forms the ground of established doctrine; it is impossible to go behind it, and to put forward ~~on the~~ ground of law what might become so if consent were absent.

as a
The case of Revenue Laws is equally remote. It also is founded on consent. No civilized State wishes to encourage offences against the laws of another State. It willingly allows a foreign State to take reasonable measures of prevention within a moderate distance outside its territorial waters. But it does not follow that action of this kind would in all cases meet with assent. It certainly would not, in ordinary circumstances, be permitted at a considerable distance from land; and in no case could it be maintained as of right against an objecting nation. In the case of *Church v. Hubbard*, relied upon in the American Argument, Chief Justice Marshall expressly said, "If this right be extended too far, it will be resisted;" in other words, he acknowledged that it is a privilege exercised by concession, and depending for its continued existence on the moderation with which it is used.

The pursuit of vessels issuing from territorial waters after they—or some of the persons on board—have committed offences within them, is of course again different. There is again consent to the adoption of moderate measures to punish an offence committed within the territory; but it is a condition that the pursuit shall be immediate. The right is not an absolute one, to be exercised at the will of the State; it is a limited and concessionary one.

When cases of these sorts are all excluded, the residuum will be found to consist in those in which there has been a real or supposed, or at least an alleged, emergency in point of time, and genuine danger, if not to the existence of the

State, at least to its territory and the lives of its subjects. So much is this the case that almost all writers overlook the rare instances in which the right of self-protection can be exercised in time of peace, and confine their attention in their remarks in relation to the exercise of that right to measures taken in view of war.

The true rule of self-protective action in places beyond the territory of a State in time of peace was stated by Mr. Webster with perfect correctness in essence, though with unnecessary vigour of language, in a despatch addressed to the British Government on the subject of the case of the "Caroline." "It will be," he said, "for Her Majesty's Government to show upon what state of facts and what rules of international law the destruction of the 'Caroline' is to be defended. It will be for that Government to show a necessity of self-defence, instant, overwhelming, leaving no ~~device~~ of means and no instant for deliberation."

V/

choice

No one denies the right of a State in such circumstances as these to act without reference to whether what it does falls within the limits of a practice which has received the consent of nations; but to attempt to bring the protection of fur-seals under the same head with it is simply idle. In no circumstances less exceptional am I aware of any action on the high seas which is at once permissible and incapable of being referred truthfully and properly to some other head than that of self-protection.

If it be alleged that where consent is given it is given because the right to self-protection is recognized, the answer is obvious. The abstract right is recognized, but the right to act whenever a State considers itself to have sufficient cause is not recognized; except in circumstances of pressing emergency, due occasion and due limits must be regulated beforehand by positive consent, or by the implied consent of continued sufferance. It is not for the State acting, but for the body of civilized States, to determine when individual action may be allowed outside territorial limits.

3. As regards the question whether fur-seals are capable of becoming subjects of property, the American Argument proceeds on the assumption that the analogies of what it contends to be municipal law can be used, because natural law can be directly applied to the solution of new

difficulties in international law, and because in this respect municipal law is merely an expression of, or a logical deduction from, natural law. If what I have already said is well founded, the inapplicability of natural law to the direct solution of international questions carries with it the failure of analogies derived from a municipal law which is based on natural law. Before the analogies can be applied, it must be shown that international law has taken up into itself as acknowledged principles, forming part of its own body, the principles from which the municipal law is an inevitable, or at least the most reasonable, deduction.

There can be no question that international law has not taken up into itself any principles connected with the reduction into possession and ownership of unowned things which are susceptible of ownership, near enough to those embodied in municipal law affecting animals naturally wild, to render the application of analogy possible.

§ /

The law of territorial occupation is that which approached most nearly to the municipal law in question; but it is not near, and it has grown on a line of its own out of the peculiar circumstances under which occupation was effected in the earlier days of discovery. This, being itself within international law, can of course be used by way of analogy or illustration. And so far as it can be used it is unfavourable to the contention of the United States. For, while their contention would enlarge the range of permitted action with regard to unowned things, and would tend to diminish the amount of personal contact and control necessary to establish and preserve ownership, the recent development of the law of occupation proves that the present tendency of the body of States is to enact that there shall be more thorough and more continuous control than has hitherto been demanded on the part of nations claiming to occupy and to reduce to possession unowned territory. It is unnecessary to point out the contrast between the loose and occasional connection between a State and its occupied territory which was allowed by universal consent when North America was occupied (take, *e.g.*, the Mississippi Valley and Oregon cases),* and that close connection and permanent control

* Prince Rupert, Hudson's Bay Company, Charles L. Discovery of mouths of river.

which is required under the recent Agreements on the coast of Africa.

It may be noted that it would perhaps even be possible to argue upon the analogy of the American arguments that Great Britain might prevent cod-fishing in non-territorial waters off the Newfoundland coast. The fish come into the territorial waters at a specific period of the year for a specific purpose, that of obtaining food which can then be only procured there; they can be, and have been, destructively fished; they are capable of being preserved by human care; they have a permanent local range. The analogy only fails in that they do not "subject themselves" like the seals to human contact; but the subjection of the seals being accidental and not willing, the difference is not serious, if indeed the word "serious" can be used with reference in any way to the American contention.

I have not offered any remarks upon the question whether fur-seals can in fact be subjects of property if the analogy of municipal law were admitted, because, although the subject was mentioned in the course of conversation, I presume that it was not wished that I should travel beyond the range of the subject in its relation to international law.

W. E. HALL.

41
CONFIDENTIAL.

Notes as to when and how the United States first attempted to exercise authority in Behring Sea outside of the ordinary 3-mile Limit.

WHEN the British Government in 1887 desired information as to the Regulations respecting fur-sealing, Mr. Bayard informed Sir L. West that—

"the remoteness of the scene of the fur-seal fisheries, and the special peculiarities of that industry, have unavoidably delayed the Treasury officials in framing appropriate Regulations, and issuing orders to the United States' vessels to police the Alaskan waters for the protection of the fur-seals from indiscriminate slaughter and consequent speedy extermination."

He also observed—

"The question of instructions to Government vessels in regard to preventing the indiscriminate killing of fur-seals is now being considered, and I will inform you at the earliest day possible what has been decided, so that British and other vessels visiting the waters in question can govern themselves accordingly."

No Regulations touching the "policing" of Alaskan waters for the protection of fur-seals were ever so furnished.

In the British Case it was stated—

British Case,
p. 119.

"The instruction given from time to time to Commanders of the Revenue Service, or of ships of war of the United States cruising in Behring Sea, and guarding the interests of the Alaska Commercial Company upon the islands leased to the Company, do not even suggest the intention of that Government to assert a claim so vehemently disputed when advanced by Russia.

"On the contrary, while vessels from British Columbia and elsewhere were trading and fishing generally in the Behring Sea, and while vessels—chiefly those of the United States—were actually raiding the rookeries, the instructions relating to the fisheries given to Revenue Marine vessels by the United States' Government until

1886 were confined, as has been shown, to the immediate protection of the seal islands."

And again—

"That during that period, notwithstanding the presence of seal-hunting craft in Behring Sea, the United States' authorities confined the exercise of jurisdiction to the land and waters included within the ordinary territorial limits."

British Case,
p. 120.

In the United States' Case it was on the other hand asserted :—

"Since the year 1867 the Treasury Department has every year, with a single exception, sent one or more revenue-cutters to Behring Sea for the purpose of guarding the interests of the United States' contract there, including the protection of fur-seals, against the infraction of the law relating to them."

United States'
Case, p. 81.

A notice was served under the terms of the Treaty of Arbitration calling for the production of the instruction given to the United States' revenue cutters or cruisers sent to Behring Sea annually since the year 1867 referred to in the above paragraph of the United States' Case.

See British
Counter-Case,
Appendix, vol. i,
p. 59.

The reply of the Agent for the United States appears in the Appendix to the British Counter-Case.

British Counter-
Case, vol. i, p. 59.

Touching the demand he observes :—

"The Undersigned herewith furnishes copies of the instructions therein referred to, notwithstanding he is clearly of opinion that they have been neither specified nor alluded to in the Case of the United States. The documents in which these instructions are contained include other matters as well, which, being irrelevant to the present inquiry and somewhat voluminous, have been omitted. Should, however, the British Agent find that he has been prejudiced by any such omission, the latter will, upon demand, be supplied in every case."

From the following references it will be seen :—

1. That from 1867 to 1881 the instructions to United States' revenue vessels in Behring Sea did not in words apply to waters outside of ordinary territorial limits.
2. That not until 1881 were the Revised Statutes of the United States interpreted by the United States' Treasury Department as applicable to the waters in Behring Sea outside of the 3-mile limit.
3. That until 1886 the instructions were not

applied in fact to foreign vessels outside of ordinary territorial limits, nor were foreign vessels specifically referred to in the instructions.

4. That in 1886 foreign vessels were for the first time seized when outside of the 3-mile limit in Behring Sea.

5. That in 1887 the distinction between United States' vessels and others first appears in the instructions (now produced), and United States' laws were applied to foreign vessels.

6. That in 1888, though the instructions (now produced) were of the same general tenour as those of 1886 and 1887, foreign vessels were not interfered with when outside of the 3-mile limit.

7. That the master of one of the United States' revenue vessels testified that his instructions in 1888 distinguished between United States' and foreign vessels.

8. That the instructions in which such a distinction was drawn have not been produced, though a demand was made under the Treaty for all of these instructions.

By Act of Congress passed on the 27th July, 1868, the killing of seals was prohibited—

"within the limits of said Territory or in the waters thereof."

Act of Congress,
1868.

British Case,
p. 103.

Instructions to
revenue vessels,
1869.

British Counter-
Case, Appendix,
vol. i, p. 64.

Treasury letter of February 6, 1869.

"Instructions to enforce this Act on St. Paul Island.

"This prohibition is designed chiefly to apply to killing for trade. You are especially to prevent that, but you will not punish Aleuts living on the island should they occasionally kill such small numbers as may be absolutely necessary for their sustenance and clothing on the island, not to be carried away."

Act of Congress,
1870.
British Case,
p. 104.

Ibid., pp. 107, 108.
Mr. Boutwell to
Mr. Phelps, 1872.

The Act of Congress of the 1st July, 1870, prohibits the killing of fur-seals on islands or in waters adjacent thereto.

Mr. Boutwell, writing to Mr. Phelps on the 19th April, 1872, expresses the opinion that the United States has no authority to interfere with sealing-vessels when 3 marine miles from the shore.

Secretary of the
Treasury to
Captain Geo. W.
Bailey, April 20,
1877.
British Counter-
Case, Appendix,
vol. i, p. 68.

"To cruise in the waters of Alaska and among the Seal Islands for the protection of the sea-otter hunting-grounds and the seal fisheries, as well as the revenue from customs," &c.

[281]

B 2

"Referring to Department letter of this date, directing you to proceed with the revenue-steamer 'Corwin,' under your command, to Alaska, on special duty in connection with the seal fisheries, you are hereby clothed with full powers to enforce the law contained in the provisions of Section 1956 of the United States' Revised Statutes," &c.

Secretary of the Treasury to Captain C. L. Hooper, May 15, 1880. British Counter-Case, Appendix, vol. i, p. 69. Instructions, 1881. Interpretation of the Statutes.

"Treasury Department, Office of the Secretary,
Washington, D.C., April 21, 1881.

"Referring to Department letter of this date, directing you to proceed with the revenue-steamer 'Corwin,' under your command, to Alaska, on special duty in connection with the seal fisheries, you are hereby clothed with full powers to enforce the law contained in the provisions of Section 1956 of the United States' Revised Statutes, and directed to seize all vessels and arrest and turn over to the proper authorities any or all persons whom you may detect violating the law referred to, after due notice shall have been given. Herewith is transmitted, for your information and guidance, a copy of Department letter of the 12th ultimo, addressed to Mr. D. A. d'Ancona, of San Francisco, interpreting the law regulating the killing of fur-bearing animals in the Territory of Alaska.

British Counter-Case, Appendix, vol. i, p. 70.

"You will also seize any fire-arms, ammunition, and distilled spirits attempted to be introduced into the country without proper permit, under the provisions of Section 1955 of the Revised Statutes, and the Proclamation of the President dated the 4th February, 1870.

"A copy of said Proclamation is inclosed.

"Very respectfully,
(Signed) "WILLIAM WINDOM,
"Secretary.

"Captain C. L. Hooper,
"Commanding Revenue-steamer 'Corwin,'
"San Francisco, California."

The letter to Mr. D. A. d'Ancona referred to in the above is as follows:—

"Treasury Department, Office of the Secretary,
Washington, D.C., March 12, 1881.

"Sir,
"Your letter of the 19th ultimo, requesting certain information in regard to the meaning placed by this Department upon the law regulating the killing of fur-bearing animals in the Territory of Alaska was duly received. The law prohibits the killing of any fur-bearing animals, except as otherwise therein provided, within the limits of Alaska Territory, or in the waters thereof, and also prohibits the killing of any fur-seals on the Islands of St. Paul and St. George, or in the waters adjacent thereto, except during certain months.

United States' Case, Appendix, vol. i, p. 102.

"You inquire in regard to the interpretation of the terms 'waters thereof' and 'waters adjacent thereto,' as used in the law, and how far the jurisdiction of the United States is to be understood as extending.

"Presuming your inquiry to relate more especially to the waters of Western Alaska, you are informed that the Treaty with Russia of the 30th March, 1870, by which the Territory of Alaska was ceded to the United States, defines the boundary of the territory so ceded. This Treaty is found on pp. 671 to 673 of the volume of Treaties of the Revised Statutes. It will be seen therefrom that the limit of the cession extends from a line starting from the Arctic Ocean, and running through Bering Strait to the north of St. Lawrence Islands. The line runs thence in a south-westerly direction, so as to pass midway between the Island of Attu and Copper Island, of the Kromanboski couplet or group, in the North Pacific Ocean, to meridian of 193 degrees of west longitude. All the waters within that boundary to the western end of the Aleutian Archipelago and chain of islands are considered as comprised within the waters of Alaska Territory.

"All the penalties prescribed by law against the killing of fur-bearing animals would therefore attach against any violation of law within the limits before described.

"Very respectfully,

(Signed) "H. F. FRENCH,

Acting Secretary.

"Mr. D. A. Ancona,

"No. 717, O'Farrell Street,

"San Francisco, Cal."

Seizures, 1886.

In August 1886 Captain Abbey, commanding United States' revenue-steamer "Corwin," under instructions similar to those of 1881, arrested the "Thornton," "Carolena," and "Onward." These vessels were subsequently released by order of the Secretary of State for the United States, Mr. Bayard.

Instructions 1887.

On the 10th May, 1887, the usual instructions were given, with the addition of this clause not contained in previous instructions:—

British Counter-Case, Appendix, vol. i, p. 75.

"You will use the force at your command to the end that no persons attached to or connected with any vessels of the United States violate this law, and will strictly enforce the penalties provided for such violation."

It was also stated in the letter of the 10th May, 1887:—

Ibid.

"You will be diligent in enforcing the laws against the importation of intoxicating liquors and breech-loading rifles and ammunition into the Territory of Alaska, your attention being directed to the Executive Order of the 4th May, 1887, a copy of which is inclosed."

British Case, Appendix, vol. iii, p. 89.

A copy of this Order of the 4th May, 1887, has not been supplied, though the British vessel "Grace" was seized under it.

While on the 18th May, 1887, the following telegram appears:—

"Treasury Department, Office of the Secretary.
Washington, May 18, 1887.

"First paragraph of your instructions relates to all vessels found within the limits of Alaska Territory or in the waters thereof, engaged in violating the provisions of Section 1956, Revised Statutes. The specific mention of American vessels has reference to violation of Section 1961, Revised Statutes, and applies to them wherever found violating the law.

British Counter-Case, Appendix, vol. i, p. 76.

(Signed) "HUGH S. THOMPSON,
"Acting Secretary."

This telegram apparently was sent to Captain Healy, and also a copy to Captain Shepard.

Further seizures were made in 1887. The instructions are produced for the year 1888. They are similar to those of 1887. Captain Shepard, however, gave the following testimony before the Congressional Committee of 1889:—

"Captain Shepard's Testimony.

"Mr. Dunn.—There is no discriminating between an American and a British vessel. One would have been seized under precisely the same circumstances as the other? —A. The law makes a little distinction between an American and a British vessel in regard to the killing of female seals and seals under 1 year of age.

50th Cong.,
2nd Sess., H. R.
3853, p. 240.

"Mr. Dingley.—The law makes a distinction or the Treasury Department: which?—*The Witness.* I understand the construction the Treasury Department puts on the law is that they can prohibit the killing of female seals or seals under 1 year old by an American vessel anywhere, but they could not enforce that regulation on a foreign vessel.

"Mr. Dunn.—You understand the Treasury Department puts that construction upon the law. Is there a different construction embodied in the orders given officers of revenue-vessels?—A. Yes, Sir; they prohibit the killing of female seals, and seals less than 1 year old, by American vessels anywhere.

"Mr. Dingley.—If I understand you correctly, British vessels were allowed to do certain things that American vessels were not allowed to do?

"Mr. Dunn.—He states the Treasury Department places a construction upon the Statute which does discriminate between an American and British vessel."

No arrests were made in 1888, though the instructions were, as stated, the same as those of 1886-87.

It would appear that the complete instructions for 1888 have been withheld.

Memorandum by M. E. Clunet.

(Translation.)

I. LEGAL POSITION OF ANIMALS.

1. IN legal language animals are said to be all living things other than man.

2. By French law animals are divided into three classes :—

(i.) *Wild Animals (fera)*.—These live in a state of natural freedom (*in libertate naturali*), or having come under the control of man, are only kept there by force; those, in a word, which are not fitted by nature and habits to be either the servants or companions of man.

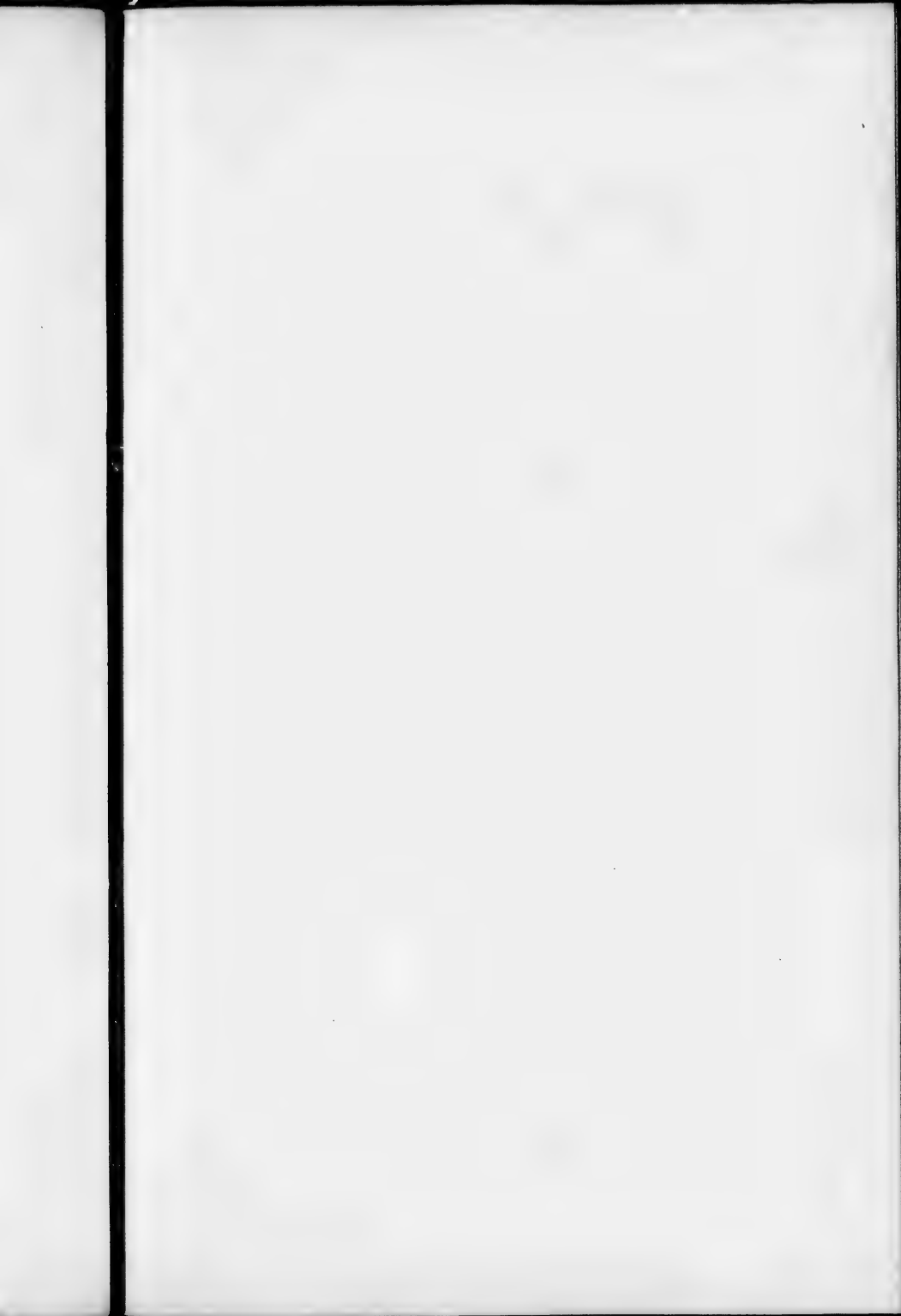
Such are game both furred and feathered, quadrupeds living in a state of freedom, savage animals, fish, crustacean, molluscs, &c.

The words "wild animals" include rabbits, birds, and birds of passage, particularly storks. Trib. Corr. (Colmar, 12 Avril, 1870 (Klinger), Neyremand, p. 242), the lark, wood-cock, snipe, fig-pecker, redwing white-tail, ortolan, bustard, stock-dove, and wood-pigeon. (Instruction du Ministre de l'Intérieur du 28 Août et du 30 Janvier, 1874.)

In addition to birds of passage, water-fowl, even birds living close to man in his dwelling-place or his gardens, having taken up their abode there, are held to be wild animals, the raven (Cassation, 5 Nov., 1842, D. 43. 1. 31.), the crow (Cassation, 13 Nov., 1815, D. Rep. V° Chasse No. 21), and other small birds (Cassation Ch. réunies [Peyroux], 25 Mars, 1846, D. 46. 1. 95.; Cassation, 24 Sept., 1847 [Girma] D. 47. 4. 70), even the sparrow.

(ii.) *Domestic Animals (Mansueta)*.—These are those which man has succeeded in mastering or taming, which he has subjected to his will, which live with him, breed under his protection,





and remain subjected to his immediate and continuous control.

Under this generic name are included :—

(a.) *Cattle*.—Horned-cattle, bulls, oxen, cows, small cattle, rams, wethers, ewes, pigs, and goats.

(β.) The equine species, namely, horses, donkeys, and mules.

(γ.) *Flocks and Herds*.—Bodies of domestic animals brought up and fed together by man's care, namely, oxen, cows, sheep, pigs, and goats.

(δ.) *Poultry*.—Farm-yard fowls, chickens, cocks, capons, turkeys, geese, and ducks.

(ε.) *Wool-bearing Animals*.—Rams, sheep, and lambs.

The Court of Cassation has also defined "domestic animals": It being understood in law that under the general denomination of domestic animals, Article 454 of the Penal Code includes living things which live, grow up, feed, and breed under the roof of man by his care. (Cassation, 14 Mars, 1861. Lichière. Sirey, 1861, 1. 1014.)

(iii.) *Half-tamed Animals (Mansuefacta)* form an intermediate class. There are animals who, without having entirely lost their natural freedom, have become accustomed to return without compulsion to the property of the man where they have to some extent made their home (pigeons, rabbits, fish, and bees). Demolombe X, No. 176.

This last class is only admitted by a small number of authorities. It also possesses but little importance, for these animals are regarded by law in the light of domestic animals when they are on the property of man, and as wild animals when they have left it.

Animals are regarded as property.*

By their nature they belong to the category of *personal property*. The law always gives the character of real estate "*by destination*" to certain animals connected with the cultivation of the soil; to doves in a dovecot, to rabbits in a warren, to fish in a pond, to bee-hives, that is, during the time the said animals remain on the estate. (Civil Code, Art. 524.)

* Civil Code, Article 528. Movable objects are those which can be transported from one place to another whether they move of their own accord, such as animals, or whether they cannot change their position except by the agency of an external force, such as inanimate things.

Animals can be the object of various civil contracts, such as sale, hire, the constitution of usufruct, &c.

II. RIGHTS WHICH MAN CAN ACQUIRE OVER ANIMALS.

1. *Domestic Animals.*

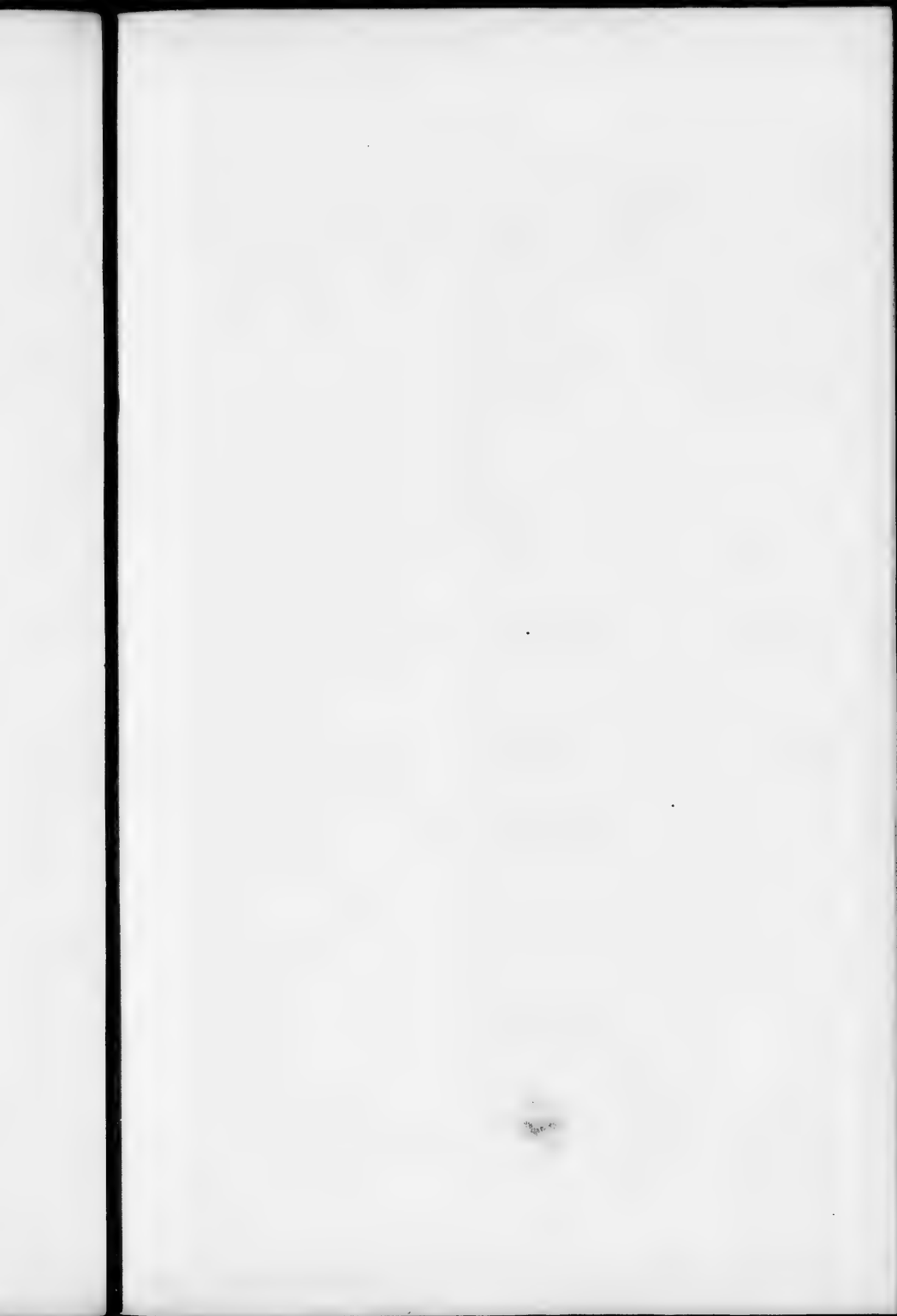
Man enjoys over the domestic animals of which he is the owner, a similar right to that which devolves on him with regard to other objects forming his property, and this right is defined as follows by Article 544 of the Civil Code: "Property is the right of enjoying and disposing of goods in the fullest sense, provided that they do not make use of it contrary to the law or to regulations."

The rights of the proprietor of a domestic animal do not cease when the animal momentarily escapes from his custody and goes on to private or public land. Unless from necessity, it is forbidden to kill a domestic animal even although it is found in a place of which its master is not the owner. Articles 452, 453, and 454 of the Penal Code provide for this event.

But, in return, the owner of a domestic animal is responsible for the action of his animals, even when they have escaped from his keeping. He must make good the damage which they have caused to property or persons. Article 1385, Code Civil, "The owner of an animal, or he who makes use of it, is responsible while using it for the damage which the animal has caused, whether the animal be under his control, or whether it has strayed or escaped."

The mere want of supervision over a domestic animal, and the fact of leaving it to itself, constitutes a penal breach of the law which is provided for, and punished by Articles 3 and 12 of heading 2 of the Law of the 28th September, 6th October, 1791, for the penalty and seizure of stray animals, beyond the reparation which can be exacted.

Certain animals which have strayed on to the land of other persons, may, under the new law of the Rural Code of April 4, 1889 (Article 4), be killed by the neighbours. "The man whose fowls pass over the property of a neighbour, and there cause damage, is bound to make good the damage. He who has suffered the damage may



even kill the fowls, but only on the spot at the moment when the damage is being done, and he has no power to appropriate them."

Even an animal that is included in the category of domestic animals, can be acquired by occupation in favour of the person who first takes possession of it, provided that it does not belong to any one.

It was so decided by the Magistrate of Fontainebleau on the 26th April, 1871, in the case of a stray horse from the Prussian army. (Special Report of the decisions of Magistrates, 1871.)

2. *Wild Animals.*

A wild animal living in a state of natural freedom belongs to no one. It is *res nullius*. The method of acquiring a right of property over it is by taking possession. (Aubry et Rau., Droit Civil, T. 2, para. 201.)

It will be useful to recall in a few words what is meant by *res nullius* in French law, and the methods of acquisition which these things admit of.

Things *res nullius* are—

(a.) Things which can never be the private property of any one; such as air, light, the high sea, running water in a state of continuous motion.

(b.) Things which do not actually belong to any one, but which by their nature become the object of a personal appropriation by taking possession. Such are wild animals, fish of the sea or of running waters, coral, plants, and grasses on the shore, &c. (Demolombe, ix, No. 461.)

(c.) As regards the products of the sea, such as amber, coral, blubber fishes (certain whales), and the like, a distinction must be made. If the things are taken from the bottom of the sea, or caught upon the waves, they are the property of the first taker (*vide* different cases, Decrees, 9th January, 1852, 4th July, 1853, 19th November, 1859, and 10th May, 1862); if, on the other hand, they are simply found on the sands, a third part only belongs to the finder, and the other two-thirds to the State. (Ordinance 1881, Book 4, Tit. ix, Art. 29; Book 5, Tit. vii, C. Civ. Art. 539 and 713.)

Every one has an equal right to gather the riches which the sea contains, for these riches themselves, up to the time of being taken possession of by the individual, are common to all. (Busson, Des Établissements de Pêche, p. 17.)

Occupation, that is to say, taking possession of wild animals, is effected by means of hunting or fishing.

Hunting.—Hunting, says in effect the Court of Cassation, includes the whole series of operations which begin with the search for a wild animal for the purpose of ultimately effecting its capture. (Cassation, 20th June, 1889, S. 89. 1. 447.)

Hunting being the means of capturing and appropriating to oneself wild animals, it follows that hunting is only the exercise of a natural right.

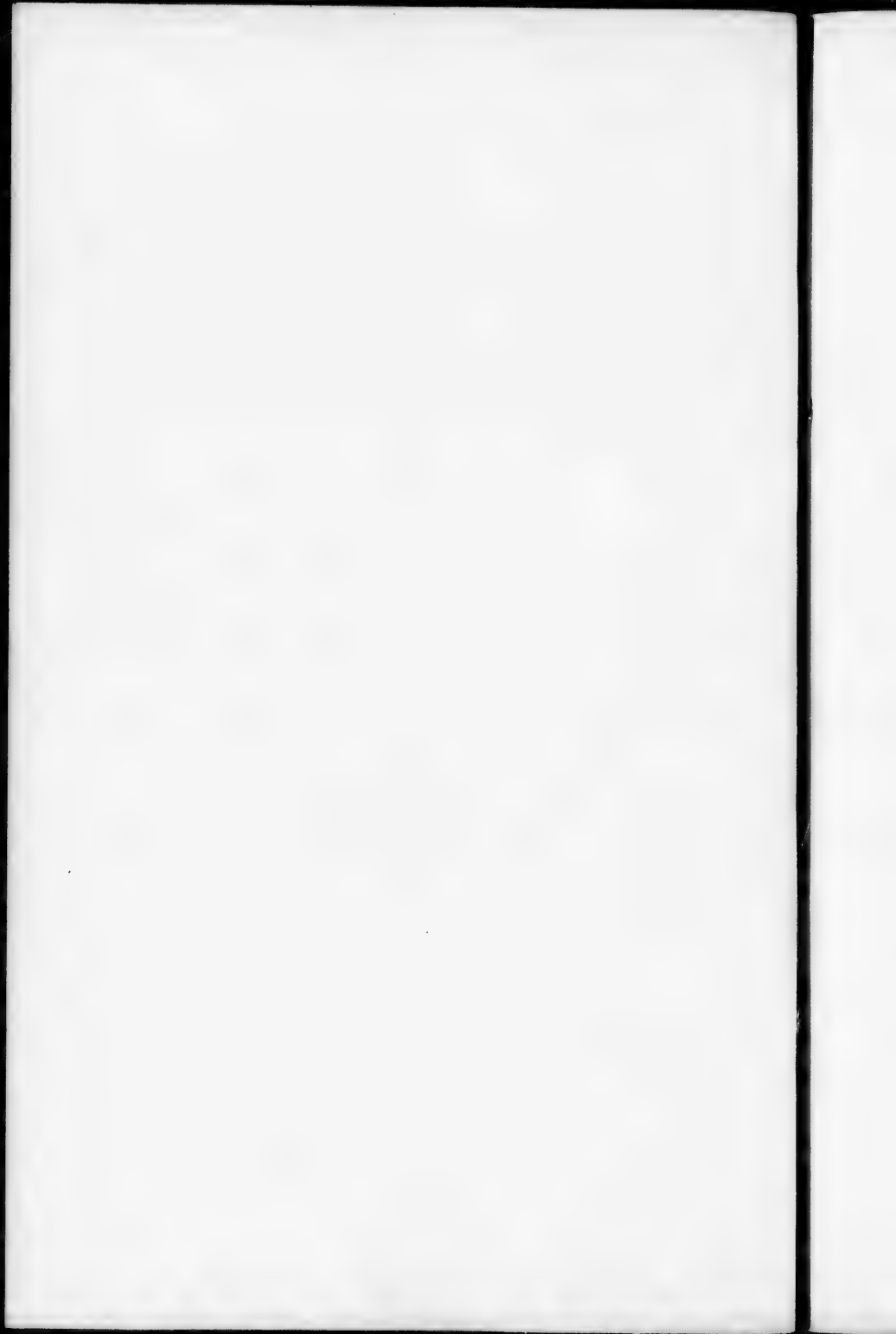
Nevertheless, this natural right has been for a long time appropriated in France by the feudal law to the profit of the Sovereign; it was considered as a Royal right. The Nobles had alone the power to hunt, but they did not exercise it, even on their own lands, except by Royal licence.*

After the French Revolution things were put right again. The Law of the 3rd November, 1789, thus enacted, in Article 3, "the *exclusive* right of hunting and of free warrens are equally abolished; and every owner of land has, on his possessions only, the right to destroy or cause to be destroyed, every kind of game, provided he conforms to the Police Laws which may be made in relation to the public safety."

* Refer to text of Royal Ordinance of Louis XIV of 1669, of which Articles 14 and 25 are as follows:—

"Article 14. We permit all Lords, Gentlemen, and Nobles to hunt in noble fashion ('noblement') with dogs and birds in their forests, thickets, warrens, and plains provided that they keep a league distance from our pleasures; for buck and 'bêtes noires' to a distance of 3 leagues.

"Art. 28. We prohibit merchants, artisans, commoners, and inhabitants of towns, boroughs, parishes, villages, hamlets, peasants, and yeomen, of whatever condition and quality they may be, not possessing fiefs, Lordships, and 'haute justice' from hunting in any place, condition, or manner, or any furred or feathered game whatever, under penalty of 100*l.* fine for the first time, double for the second, and for the third to be liable to three hours in the pillory of their place of residence on market day, and banished for three years from the jurisdiction of the 'maîtrise,' unless for some cause the Judges can remit or diminish the penalty to 'prohibition.'"





Subsequently, the Police Law of the chase of the 3rd May, 1844, established the same principle in paragraph 2 of Article 1 :—

"No one shall have the right to hunt on the property of another without the consent of the proprietor or of his assigns."

The right of hunting is thus a branch, an accessory of property. But it must not be confounded with right over the game.

The right of the chase only allows the proprietor to legally possess himself of wild animals found on his land. It does not confer upon him *ipso facto* a right of property over those animals.

That which is the accessory of property is not the animals which dwell there, but only the opportunity of taking them. The animals themselves always retain their quality of *res nullius*. In order that the proprietor of the soil may acquire them, he is obliged even himself to resort to taking possession.

So that if an individual, without the consent of the owner, kills a wild animal on the property of another, he commits an offence provided for by Article 2 of the Law of the 3rd May, 1844; he is liable to damages, to confiscation, but he is, in principle, the owner of the game which he has made his own by capture.

M. Demolombe, in commenting on the general provisions of Liv. III of the Civil Code as to the different methods in which a man acquires property brings out in clear relief the theory we have just explained.

"Does the hunter who kills a head of game become the owner of it? This is our subject. The answer is simple: the property in the animal killed in hunting lies in the hunter in virtue of the right of possession.

"This rule is perfectly clear when the animal has been killed by the hunter on his own land or on the land of another with the permission of the proprietor.

"But ought this rule to be applied in the case where the hunter has killed or taken the game on the land of another without the permission of the proprietor, or in spite of his prohibition?

"This is a very old question, and Cujas has maintained the negative (Observation 4, cap. 2). But the contrary solution has always been generally insisted upon, and it is that which follows from the Roman laws ('Comp. Inst. par. 12 de per div. Vinnius hoc loco').

"Pothier, in our ancient law, likewise maintained it ('de la Propriété' No. 24), and it is, without any doubt, the best according to our present law.

"The prohibition by the proprietor against any person hunting on his land does not really change the nature of the game, which is none the less always a thing *nullius*; 'prohibitio ista,' as Vinnius well says, 'conditionem animalis mutare non potest (loc. sup.).' The owner of the land cannot bring an action to recover the game since he has never been the owner of it; all he can do is to sue for damages.

"The Law of the 3rd May, 1844, contains nothing contrary to this principle (see Article 11, No. 2). It is only in the case of hunting during the prohibited time that this law deprives the hunter of the game which he has killed or taken; and further, it is not in order to restore it to the proprietor of the land on which it has been killed by a third person, for, as we have seen, the law gives it, on the contrary, to charitable Societies."

Demolombe, T. xiii, No. 23.

Same opinion:

Toullier, T. ii, No. 7.

Proudhon, "Du Domaine Privé," T. i, No. 386.

Duranton, T. iv, Nos. 279 and 283.

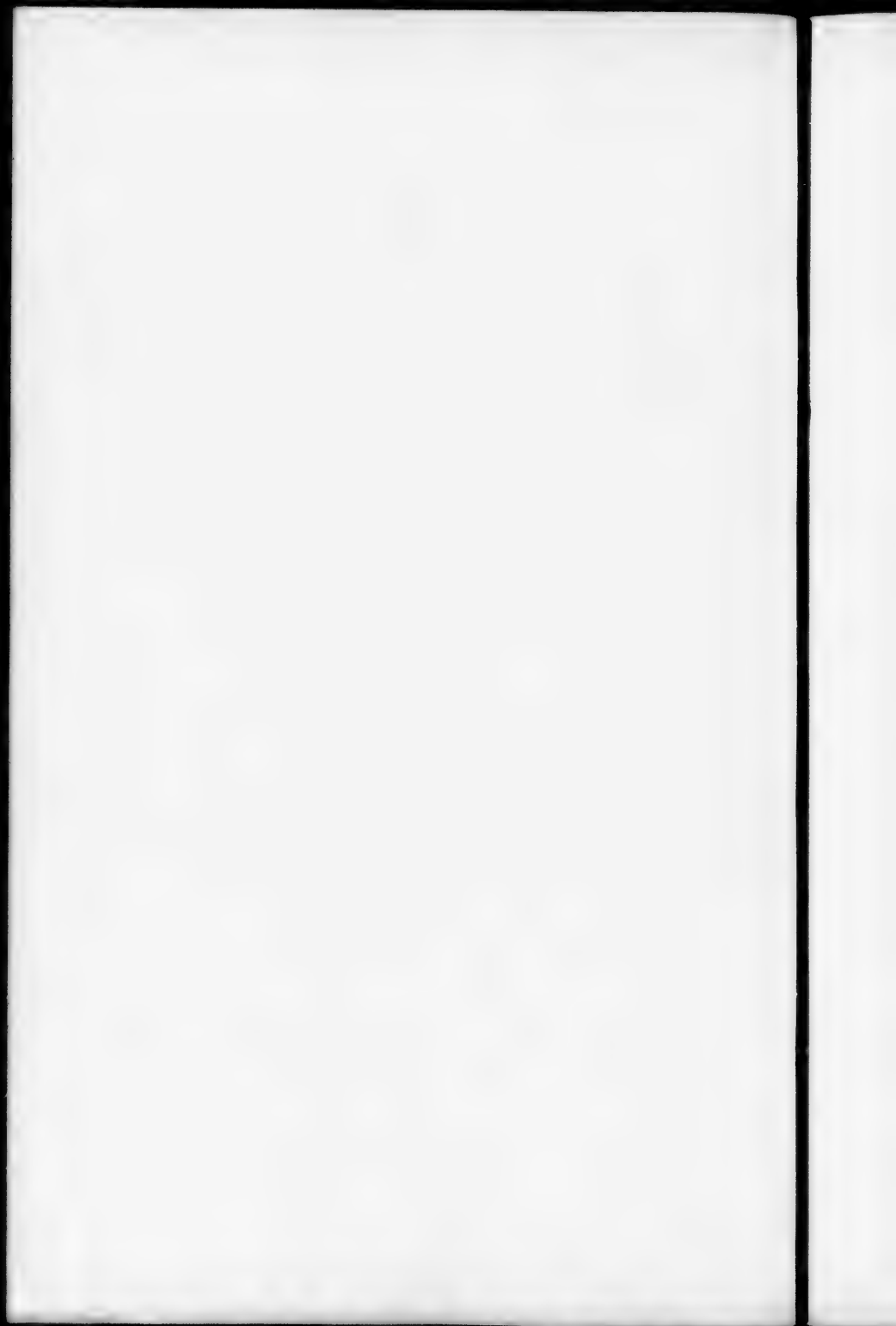
Demante, T. iii, No. 11 *bis* iii.

Aubry and Rau, T. ii, p. 236.

Another author of repute in hunting matters says in forcible language:—

"Game at large, which is not confined in an inclosed area from which it cannot escape, belongs to no one, no more to the proprietor of the land on which it is harbouring, lying, or perching, or through which it is passing, than to any one else. It becomes the property of the first who takes possession of it, even on ground where he has not the right of chase or pursuit. This is a constant principle applied without dispute from the time of the Romans to our own days. It results from the very nature of the things. Natural law and reason alone would teach it were it not everywhere written and acknowledged.

"A right, in fact, is an intelligible concept so far as it is possible to exercise it. The exercise of the right of property consists in the use of the thing which is subject to it. The proprietor of a field uses it when he cultivates it, when he sows it, or even when he walks over it. To use a thing





which is lying there, he must begin by taking it, or at least by having it in his possession in such a manner as to be its master and to prevent it from escaping. Up till that time it belongs to no one, is its own master, and often will only lose its liberty with its life, to the profit of whoever kills it for the purpose of appropriating it by taking possession."

"Droit du Chasseur," by F. Villequez,
Doyen de la Faculté de Droit de Dijon,
and formerly Lieutenant de Louveterie.
2nd edition, 1884, No. 21.

Wild animals can pass from the category of *res nullius* and become the object of private property, but then it is on the condition that they are kept and confined in an inclosed place, where they remain subject to the action of the proprietor.

The Cour de Cassation has thus decided with regard to rabbits:—

"Considering that rabbits like all other game are by their nature wild animals which belong to no one; that they only become private property when they are inclosed or at least settled in a place specially intended for this reproduction or preservation." (Cassation Crim. 13 Aug. 1840, (Desmares) Sirey, 1840, 1. 732).

The property which is established in wild animals by possession, rests so clearly on the fact of effective possession that it is lost with that possession when the animals by escaping from us have regained their natural liberty, and have thus returned to the "negative domain" of the human race; thus differing from inanimate things and domestic animals in which we retain the property even when they are lost.

Pothier, "De la Propriété, No. 57.

Demolombe, T. xiii. No. 26.

By the application of this principle, this loss of property in the wild animal which has escaped would also result even if it had been the subject of partial domestication. Thus it was decided with regard to a squirrel captured and appropriated, that after it had left its master it could become the property of the first possessor:—

"Considering that the squirrel is by its nature a wild animal, which only becomes private property, when it is, if not confined, at least

located in a place intended for its maintenance and preservation, and remains in the possession of its proprietor, and that it preserves that character only, during that time when it is detained, that having left that place on regaining its liberty, it ceases to belong to any one and can become, in case of a new act of taking possession, the property of the first possessor."

Trib. de Paix de Poissy, 10 Juillet 1885. Referred to the "Moniteur des Juges de Paix," 1885, p. 540, by M. Carré, Juge de Paix of the First Arrondissement of Paris, who entirely approved this decision.

Fishing.—Fish of the sea and running rivers are also, as we have said, wild animals, and consequently, *res nullius*.

The capture of fish is effected by means of a series of operations which has received the name of "fishing" ("la pêche").

Fishing is a mode of taking fish to the profit of those who practice it, in virtue of their own right or with the permission of the person to whom the right of fishing belongs; the fish which they take is acquired by them by virtue of taking possession.

A distinction is made between sea fishing, which is carried on in salt water, and river fishing, which is carried on in fresh water.

Sea Fishing.—Every person can fish in the sea without permission.

Ordonnance sur la Marine, of 1681.

Liv. v, Tit. i, Art. 2.

Pothier "De la Propriété," No. 51.

It is in this sense that, as one is accustomed to say, sea fishing is free; for in other respects it is subject to Bye-Laws and Police Rules, which, in the general interest—in order to prevent the destruction of the spawn and to encourage the reproduction of different kinds of fish—determine the times, seasons, and hours during which fishing is forbidden, the method, the machines and instruments prohibited, and the size of the nets which may be used.

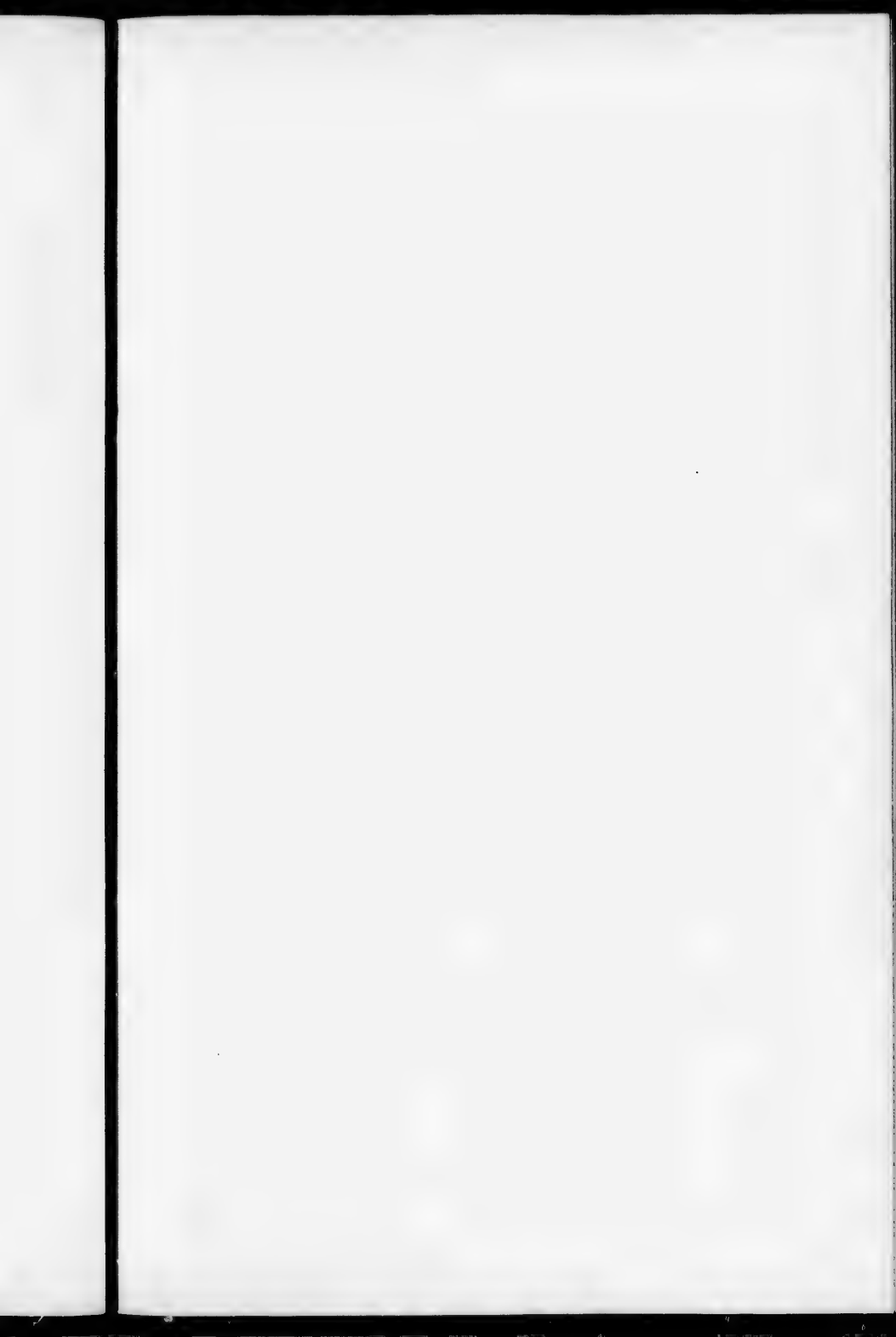
Ordonn. of 1681. Liv. v.

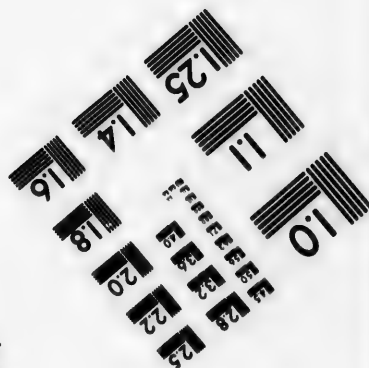
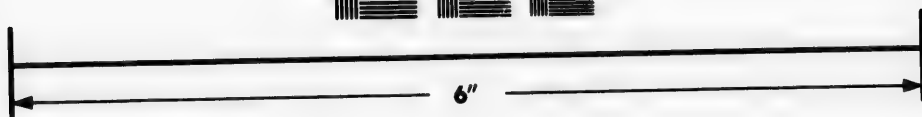
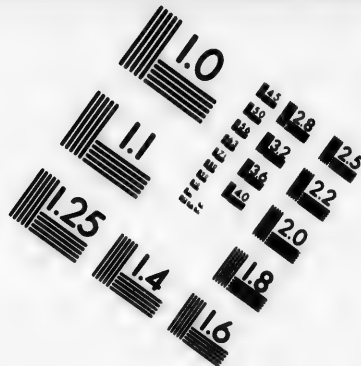
Déclarations du Roi des 23 Avril, 2 Septembre, et 24 Décembre 1726, 18 Mars 1727.

Ordonn. du 13 Mai 1818.

These Rules are not binding in the open sea except on the nationals, whom alone the national







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

law can follow outside their territory (Civil Code, Art. 3). They have no legal effect as regards foreigners except in the limits of the territorial sea.

In the territorial waters the Law of the 1st March, 1888, even forbids foreign fishing-boats to fish within a limit, which is fixed at 3 marine miles out to sea from low-water mark.

In consequence of the inability of each State to regulate fishing on the high sea, neighbouring nations have come to an arrangement by means of diplomatic Conventions. Thus France and England have regulated the relations of French and British subjects in the fisheries situated between France and the United Kingdom of Great Britain and Ireland.

Plocque. "Législation des Eaux de la Mer et de la Navigation," p. 239.

In execution of Article XI of the Anglo-French Convention, a general regulation for the fisheries between France, Great Britain, and Ireland came into force under date the 25th June, 1843. The Law of the 23rd June, 1846, has given a sanction under penalty in France to the prohibitions and regulations contained in the Regulation of 1843.

This international law made by Convention is applied by the Tribunals.

Trib., Boulogne, 14th July, 1884, Clunet, 1887, p. 331.

France, Germany, Belgium, England, and the Netherlands likewise concluded a Treaty on the subject entitled "International Convention for the purpose of regulating the Police of the Fishery in the North Sea outside Territorial Waters," signed at the Hague, May 6, 1882, and put into force April 11, 1884.

See text, Clunet, 1884, p. 661.

Bromley Burrows, "Difficultés Internationales à propos de Pêcheries Maritimes," Clunet, 1887, p. 709.

River Fishing.—This fishing is regulated in France by the Law of the 15th April, 1829, to which should be added those of the 6th June, 1840, and 31st May, 1865.

In streams navigable by craft or rafts, and in their tributaries the maintenance of which is undertaken by the State or its Representatives, the right of fishing is exercised to the profit of

the State; fishing with a floating line is nevertheless allowed to everybody except in spawning time. (Articles 1 and 5 of the Law of 1829.)

In other streams the riparian proprietors have, each on his own side, the right of fishing up to the middle of the stream without prejudice to contrary rights established by possession or title.

What of the case where the act of fishing has been exercised by an individual without right who had not obtained permission from the person to whom the right belonged?

In principle, as we have decided with regard to wild land animals, the fish thus captured, even without permission, should belong to the captor. For the fish which swims in the running water is *res nullius*, as well as the game which runs in the fields and the bird which flies in the air.

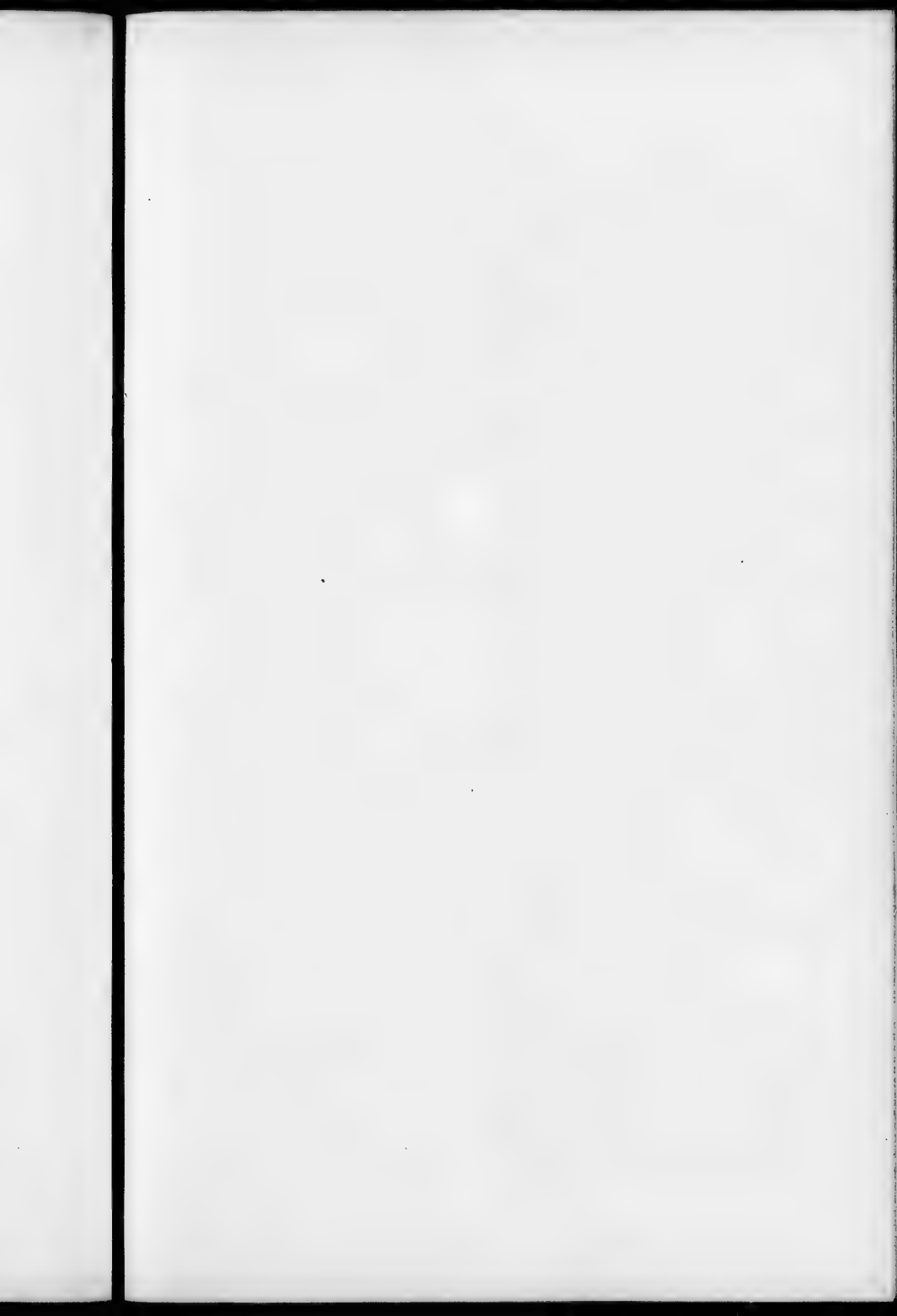
In the same manner as he who hunts on the land of another without the permission of the proprietor none the less becomes the owner of the game which he has killed, so he who fishes in a stream without the permission of him to whom the right of fishing belongs would appear to have the right to own the fish which he has taken, subject to penalties decreed by the law and damages. Such, in fact, was the Roman law (Inst. de rer. div., par. 12), and such would be also our existing Law if we had nothing but Article 715 of the Civil Code. But the Law of the 15th April, 1829, contains an Article 5, which provides that he who has fished without the permission of the person to whom the right of fishing belongs is bound to restore the value of the fish caught by him.

Demolombe, vol. xiii, p. 29.

This special provision of the Law on fishing does not contain, however, any derogation from the principle. The fish improperly caught continues to belong to the person who has acquired it by taking possession. The Law confines itself simply to making good the damages which the captor owes to the proprietor of the right of fishing.

Fish, like other wild animals, can become private property, if being captured by a previous possession, and kept in possession, always maintained, they are kept at the disposal of their proprietor.

This is the case with fish in tanks and fish-ponds, &c., as with rabbits kept in inclosed warrens.



Conclusion.

It follows from the foregoing that according to French law the proprietor of a territory occupied or frequented by wild animals has no right of property in those animals; that the right which devolves upon him from the ownership of the soil is the power to capture them by artifice or by force to the exclusion of everybody else while they are on his land; that he does not acquire property over those animals unless he has caught them, and as long as they are in captivity; that if these animals succeed in recovering their liberty they again become *res nullius*, capable of appropriation by a fresh first possession; that the other persons, who have even improperly taken possession of a wild animal on the land of another, are the proprietors of it, subject to indemnity and punishment for the penal infringement; that wild animals which have been captured by means of a former taking possession cannot be considered as the property of the owner except on the condition of their being kept in a place inclosed and bounded from which they cannot get away. When wild animals making use of their liberty have left the land of a proprietor to pass on to the land of another or on to public lands, the proprietor stands in point of law towards them in the same position as any other person; he does not possess over them any right of pursuit, even if he should have begun to chase them.

It is in fact in sole reference to this last circumstance that the well-known question of "the right of pursuit" has been raised.

The privilege granted to Lords and Nobles to hunt on their own lands (see note, p. 5) raised the difficulty of knowing whether the game "started on those lands" could be pursued over to the land of another.*

* The following is from the "Treatise on the Law of Pursuit," by the Chevalier Le Verrier de la Conterie, which appeared in 1778 :—

"Right of pursuit is the name given to the right which the noble hunter has to pursue on the land of another the beast which he has started up on his Lordship. This right consequently only exists for Lords, because they alone are proprietors of beasts which they attack in their tenures: they belong to them in fact so long as the pursuit of them is not interrupted. Otherwise they change their masters in changing their domination, and become those of the new Seigneur, except the stag and the hind, which belong to the King alone throughout the whole extent of his kingdom."

This question was much discussed before the Revolution among lawyers and authors conversant with hunting. This right was in fact originally rather tolerated by usage than recognized by the texts of laws, and received a different interpretation according to the provinces where it arose.

It would therefore be a mistake to suppose that the right of chase implied *ipso facto* the permission of following game upon the property of another.

Sorel, Propriété du Gibier, No. 14.

Under the Empire, according to the actual Law of the 3rd May, 1844, all authors recognized that the right of pursuit does not exist.

Lavallée et Bertrand, 1844, p. 108.

Rogron, Code de la Chasse, 1847, p. 159.

Gillon et Villepin, 1851, p. 247, &c.

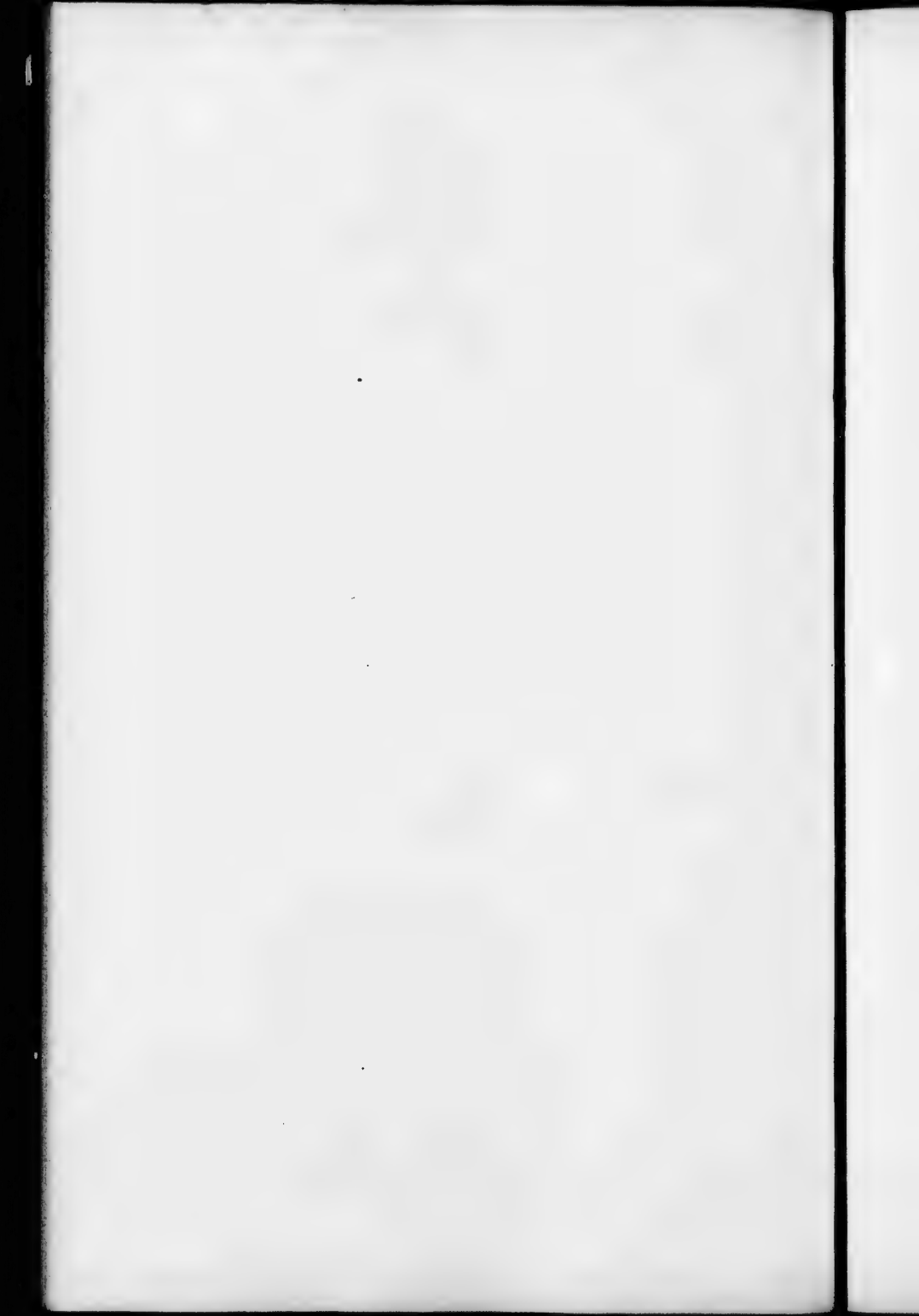
The owner of the property then could not, without himself committing an unlawful act, pursue wild animals beyond his own soil.

It is an offence to follow game after it has passed the boundary of the hunting domain. This principle has only one exception which the law (Article 2, paragraph 2) has formulated in these terms: "The fact that dogs, in chasing, had crossed into the property of another shall not be considered an offence against the Game Laws when the dogs are in pursuit of game started on the property of their masters, excepting, of course, civil action if it lies in the case of damage."

Chenu, Chasse et Procès, 1890, p. 80.

The right of pursuit for the proprietor is, as one observes, reduced to very moderate proportions. The law is only willing to consider the proprietor as not offending if in the course of hunting his dogs happen, in pursuing a wild animal, to cross a piece of land which does not belong to him.

That which the law accords to the owner is only "an excuse." The Court of Cassation expresses it in so many words: "Considering that the 3rd paragraph of No. 2 of Article 11, in permitting, according to circumstances, the entry into the land of another by dogs that are running in pursuit of game, started upon the property of





their master, not to be considered as a crime, has for its only object to found an excuse for an act of hunting where it shall have been commenced lawfully, and when the master of the dogs has found himself unable to prevent that entry."

Cassation, 7th December, 1872, 1st Palais, 1873, p. 189.

After the wild animals have quitted for a moment, or for ever, with or without the *animus revertendi*, the soil where they were lying, others have the right to capture them. These animals will be lawfully acquired by taking possession, whether it be by the proprietor of the soil where they have taken refuge, or by the first comer if they have taken refuge upon public land.

Right of Protection.

There has never been, according to French law, any question of any right of protection which could belong to the proprietor of soil over wild animals which had quitted that soil in order to go elsewhere; for example, over a covey of partridges lying for a time in another field, over deer lying in the woods of a neighbour, fishes passing from a private watercourse into a public river, &c.

This right of protection could only be the corollary either of the right of property or of the right of chase of these animals.

We have just seen that the proprietor of a piece of land has no right of property over wild beasts which are there, these being by their nature in law *res nullius*; he has only over them the right of capture by hunting or fishing, and that this limited right comes to an end when the animals have quitted the soil.

How could the proprietor pretend to "protect" animals with regard to which he has become a third person, when they are no longer on his land or in his water?

Protection over these animals is exercised by the law, which with the assistance of constantly increasing regulations takes care that they shall not be molested or destroyed in an unreasonable manner.

3. Animals partly tamed.

This category includes, as one knows, those animals which without losing entirely their own liberty, are accustomed to return without com-

pulsion to the property of the individual where they have in a certain sense elected their domicile, and form so to speak a temporary home: such are pigeons, rabbits, fish, bees.

These animals belong to the proprietor of the soil on which they live; Article 524, Code Civil, declares them to be property by destination.

Nevertheless, this property is also lost with the loss of possession.

Article 564 of the Code Civil enacts: "That pigeons, rabbits, fish which betake themselves to another dovecot, warren, or pond, belong to the proprietor of the last-mentioned places, provided that they have not been enticed there by fraud or artifice."

If these animals have been induced to go from the land of one to that of another by fraud, "the fraud cannot be a means of acquiring them;" a great number of authors allow the right of retaking by the former owner.

The principles of Article 564, Code Civil, apply to deer, roe-deer, hares, and other animals inclosed in a park.

Demante, vol. 2, p. 399.

Chavot "Propriété Mobilière," vol. ii, p. 379.

Duranton, vol. iv, pp. 428 and 429.

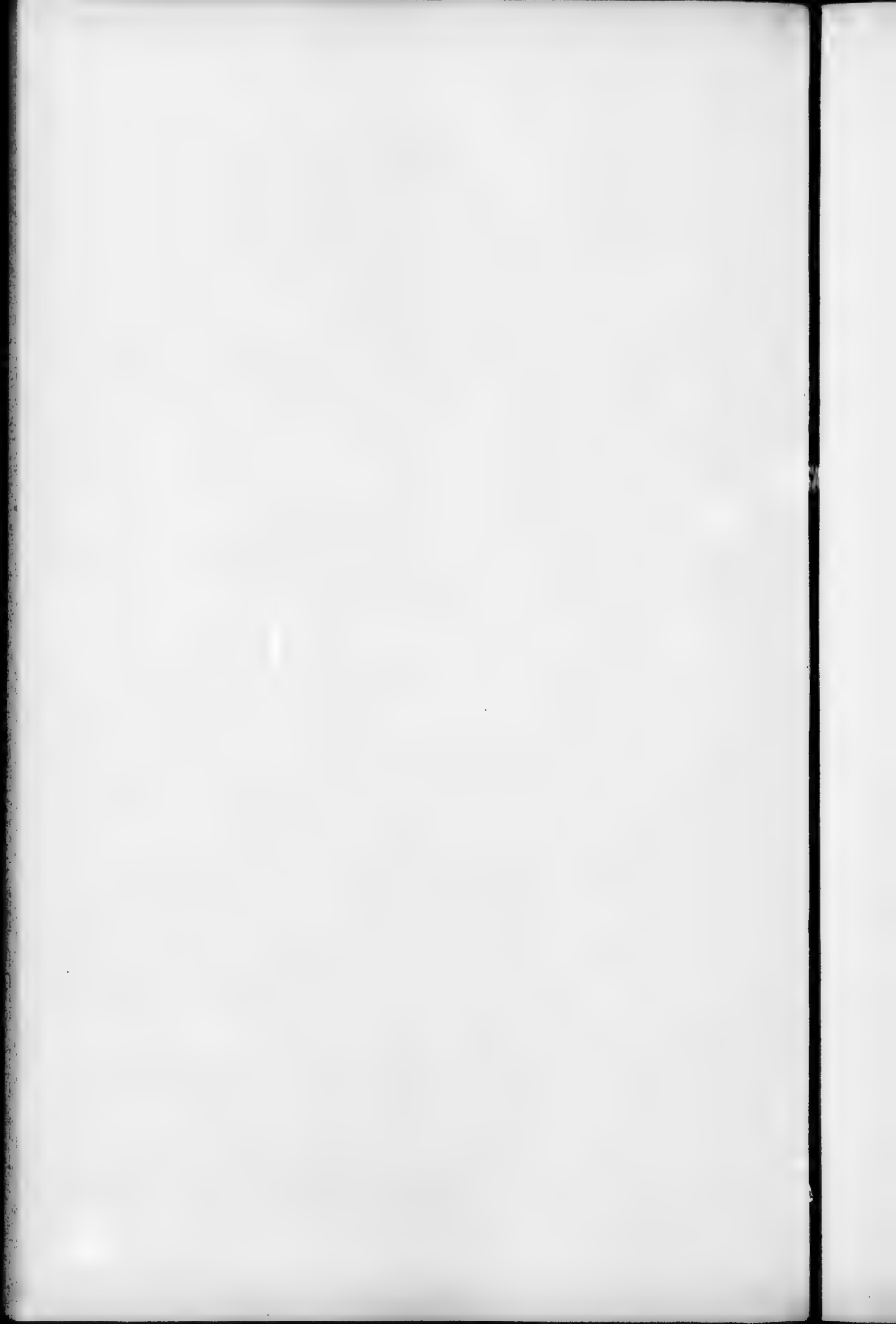
Marcadé, vol. ii, No. 470.

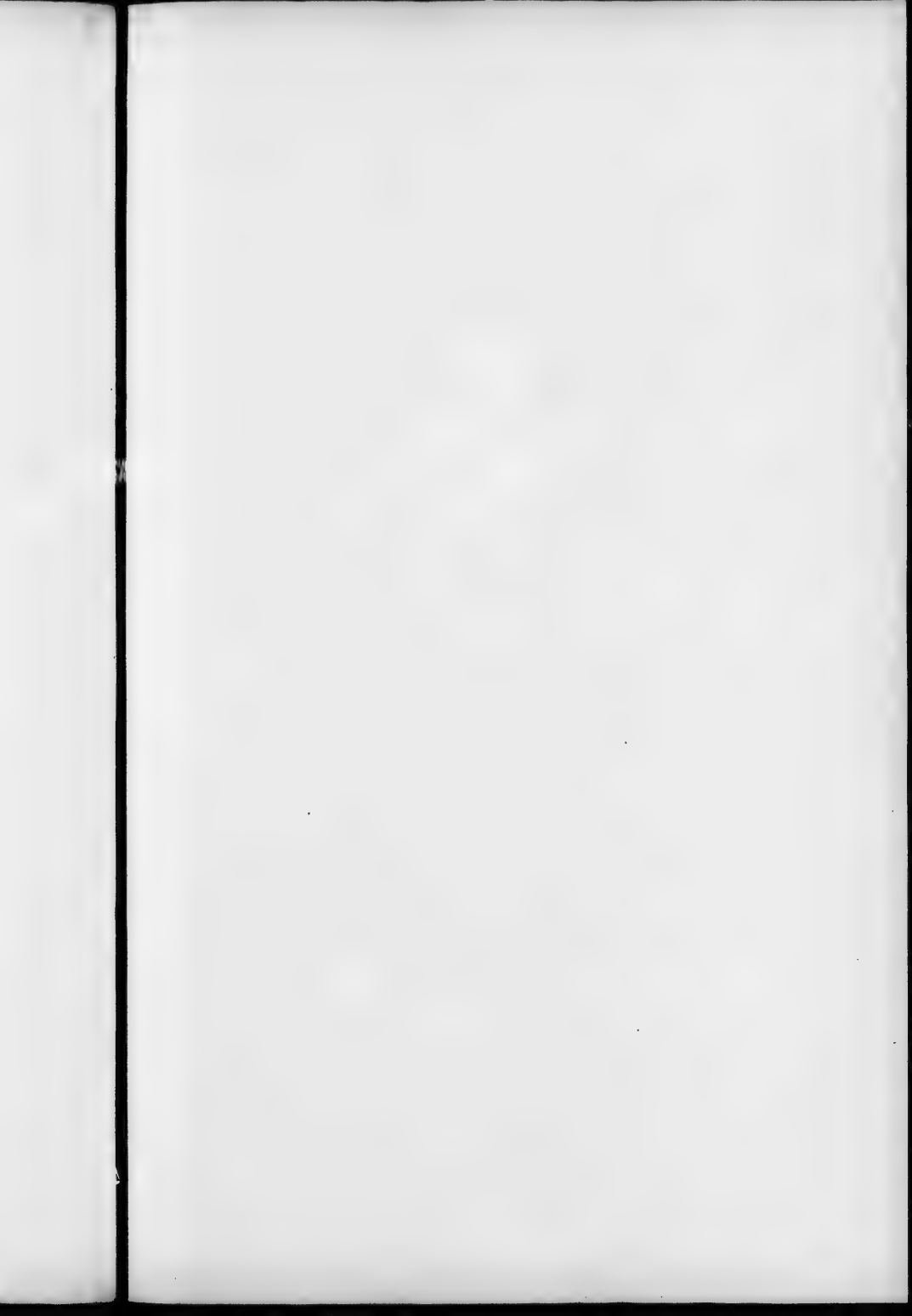
So far as relates to bees the position is somewhat peculiar.

When the bees are in a wild state they are *res nullius*, and become the property of the first taken. If they have taken up their abode in the hives they are susceptible of private property.

The recent Law of the 4th April, 1889, of the Rural Code in Article 7, indicates in what manner the property in bees ceases when the bees located upon any land abandon it: "The proprietor of a swarm has the right to retake it and to repossess himself of it as long as he has not given up its pursuit, otherwise the swarm belongs to the proprietor of the ground upon which it has settled."*

* This is a principle of Roman law. The authors generally agree that it has been reproduced by Bouteiller in the "Somme Rurale;" the contrary is the case. According to him bees once flying away revert to their wild state "while they are in the air," and on their flight they are without a master and have returned to their freedom, and therefore whoever can then take them is in fact their master by the law of notions ("Somme Rurale," folio lxxix). Report from the speech of M. Thellier de Poncherville at the Chamber of Deputies ("Journal Officiel," September 18, 1888).





In spite of their almost sedentary habits and the *animus manendi* with which they are endowed, bees are classed by the law among wild animals. This classification is very instructive in order to appreciate the character which is commonly given to other animals.

"Considering," said the Court of Toulouse, "that according to the tests furnished both by principles and by jurisprudence, domestic animals are those which associate with man, live about him in his house, are nourished and bred by his care; that the bees still retain, after being taken possession of by man, their wild nature which the Roman law recognized; that they do not live near man and under his roof, and they are separated from his habitation by reason of the inconvenience and danger which their proximity involves; that the bees familiarize themselves so little with man that one is obliged to take precautions in approaching their hives and removing their honey which the labour of these insects has stored in cells;

"Considering further, that if in a certain measure the surveillance and care of the proprietor is employed in the preservation and nourishment of the bees, that they rely for their subsistence in taking from shrubs and flowers near the hives, and in carrying thither the substances that they have gathered;

"Considering also that these essential difficulties make it impossible to class bees in the category of domestic animals."

Cour d'Appel de Toulouse, 3rd and 28th
May, 1876, S. 77. 2. 15.

Cour de Limoges, 5th December, 1860,
S. 61. 2. 9.

Done at Paris, the 23th March, 1893.

(Signed) ÉDOUARD CLUNET,
Avocat à la Cour de Paris.

95 2028/1 15-

BEHRING SEA ARBITRATION.

POINT 5 OF ARTICLE VI.

Protection of or Property in Seals.

THE claim involved in the question under point 5 is not only new in the present discussion, but is entirely without precedent.

Any such claim is, moreover, in direct opposition to the rules of principle and practice heretofore maintained by the United States and this and other analogous cases.

No claim involving such right of property in seals has ever been officially formulated or explained, but some idea of the character of such supposed right may be formed from the following allusions in published documents:—

(1.) The Secretary of State, Mr. Bayard,

(a.) in an interview with the British Minister at Washington on the 10th December, 1886, said—

"The value of the seal rookeries on these islands would be destroyed if it was open to all vessels to kill seals outside the 3-mile limit, for no seals would ever reach them."

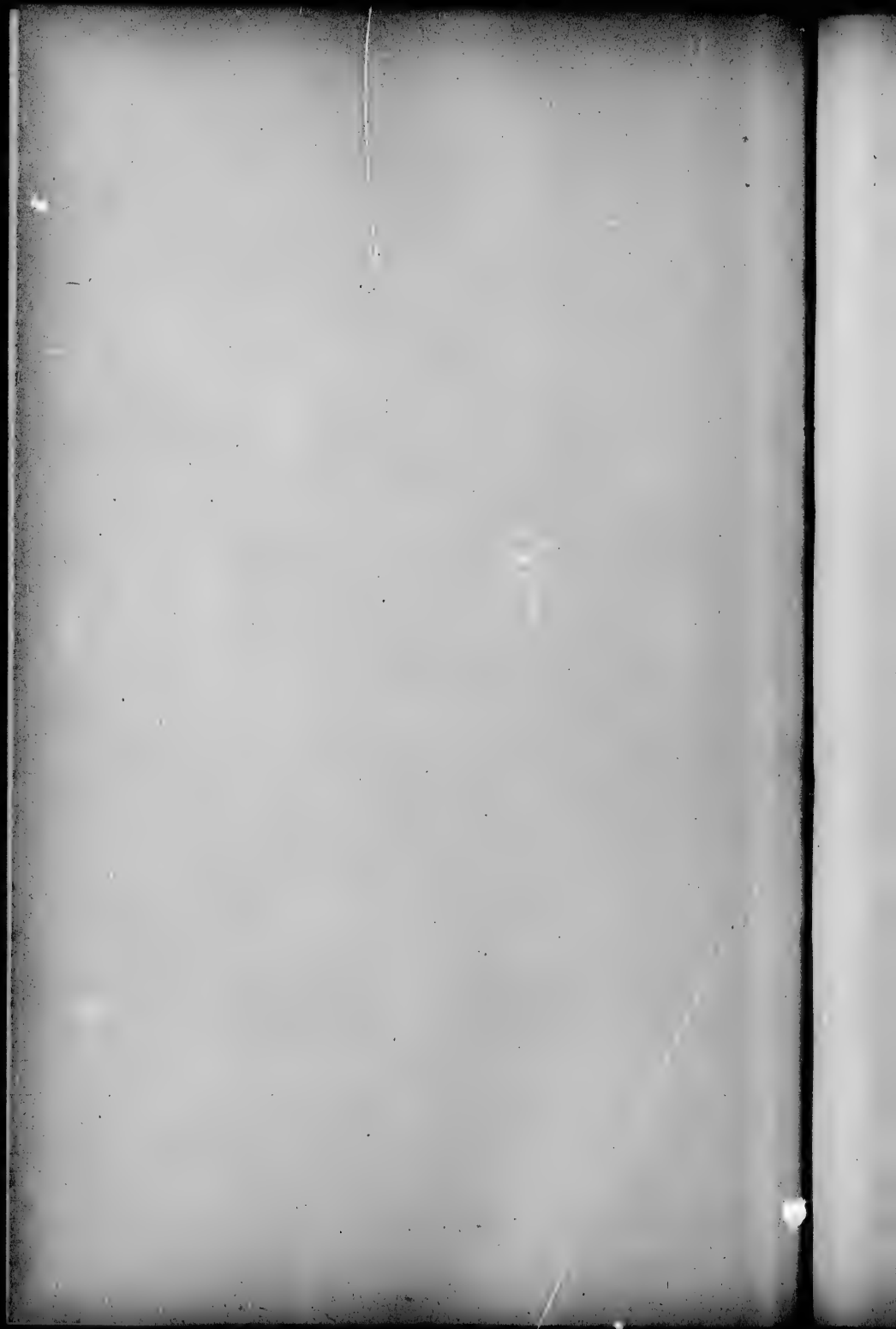
(b.) Wrote, December 1886:—

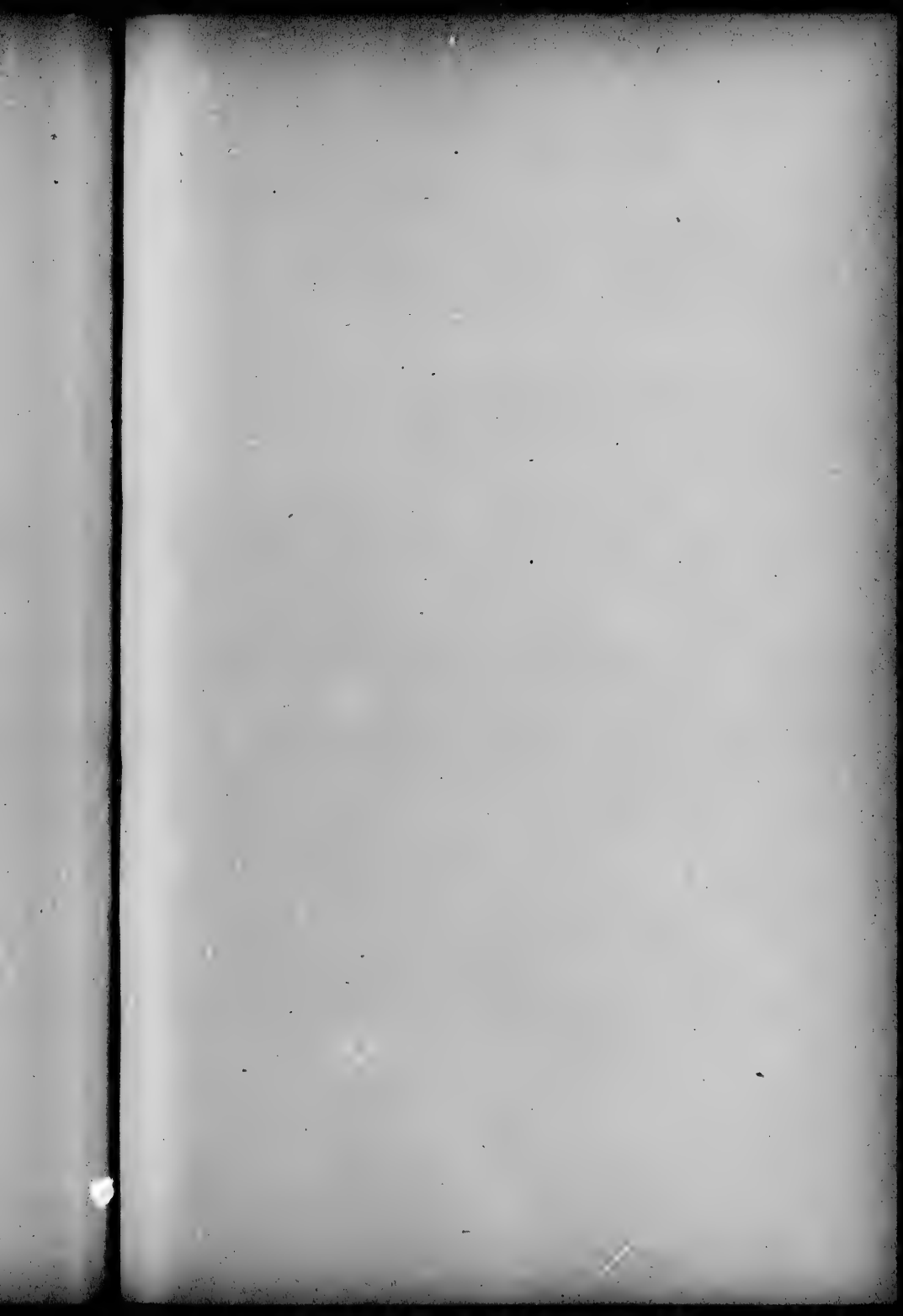
"Without raising any question as to the exceptional measures which the peculiar character of the property in question might justify this Government in taking, and without reference to any exceptional marine jurisdiction that might properly be claimed for that end "

(c.) Wrote, December 1886:—

"The underlying principle of international law which subordinates in cases of clear necessity the abstract right of individuals upon the high seas to the preservation of an important national right and interests that are brought into peril for the purposes of private gain."

Mr. Blaine, in his letter to Sir Julian Pauncefote of the 17th December, 1890, suggests the following question for decision, though it was not ultimately accepted in that form:—





"What are now the rights of the United States as to the fur-seal fisheries in the waters of Behring Sea outside the ordinary territorial limits; whether such rights grow out of the cession by Russia of any special rights or jurisdiction held by her in such fisheries or in the waters of Behring Sea, or out of the ownership of the breeding islands and the habits of the seals in resorting thither and rearing their young thereon and going out from the islands for food, or out of any other fact or incident connected with the relation of these seal fisheries to the territorial possessions of the United States?"

It is further stated in a later part of this despatch that the Government of the United States—

"Do not lack abundant authority, according to the ablest exponents of international law, for holding a small section of the Behring Sea for the protection of the fur-seals. Controlling a comparatively restricted area of water for that one specific purpose is by no means the equivalent of declaring the sea, or any part thereof, *mare clausum*."

What this "small section" of Behring Sea means is more fully explained in a foregoing portion of the despatch, as follows:—

"The President will ask the Government of Great Britain to agree to the distance of 20 marine leagues, within which no ship shall hover around the islands of St. Paul and St. George from the 15th May to the 15th October in each year. This will prove an effective mode of preserving the seal fisheries for the use of the civilized world. . . . The United States desires only such control over a limited extent of the waters in the Behring Sea for a part of each year as will be sufficient to insure the protection of the fur-seal fisheries."

In the question as now propounded for decision by arbitration, there appears, however, to be an underlying claim to some exceptional if not absolute right of property in the fur-seals, individually or collectively, which cannot be admitted.

It is scarcely conceivable that any Government would endeavour to maintain such a proposition of ownership in the fur-seal as has been advanced for instance by Mr. Elliott, but the mere fact that such a claim has been stated renders it necessary to guard against any misconception in this regard.

Mr. Elliott, in a foot-note to p. 157 of his Census Report, 1881, writes as follows:—

"The fur-seals of Alaska, collectively and individually, are the property of the general Government, and for their

special and sole protection the extra legislation of July 1870 was designedly enacted. Every fur-seal playing in the waters of Behring Sea around about the Pribyloff Islands, no matter if found so doing 100 miles away from those rookeries, belongs there, has been begotten and born thereon, and is the animal that the explicit shield of the law protects; no legal sophism or quibble can cloud the whole truth of my statement. Construe the law otherwise, then a marine licence of hunting beyond 1 marine league (3 miles) from the shores of the Pribyloff Islands would soon raise up such a multitudinous fleet that its cruising could not fail, in a few short years, in so harassing and irritating the breeding-seals as to cause their withdrawal from the Alaskan rookeries, and probable retreat to those of Russia, a source of undoubted Muscovite delight and emolument, and of corresponding shame and loss to us."

Another and later, but again unofficial, exponent of the theory of "property" in fur-seals is found in the Honourable Mr. E. J. Phelps, who, in an article on the general subject contributed to a popular magazine, seems inclined to take ground similar to that adopted by Mr. Elliott, though less definitely.

Speaking of right on the high seas, he says:—

"It never authorizes injury to the property or just rights of others, which are as sacred at sea as on shore. This colony of seals, making their home on American soil, and unable to exist without a home upon some soil, belong to the proprietors of the soil, and are a part of their property, and do not lose this quality by passing from one part of the territory to another in a regular and periodical migration necessary to their life, even though in making it they pass temporarily through water that is more than 3 miles from land."

Other passages which may be cited from Mr. Phelps' article to the same effect are:—

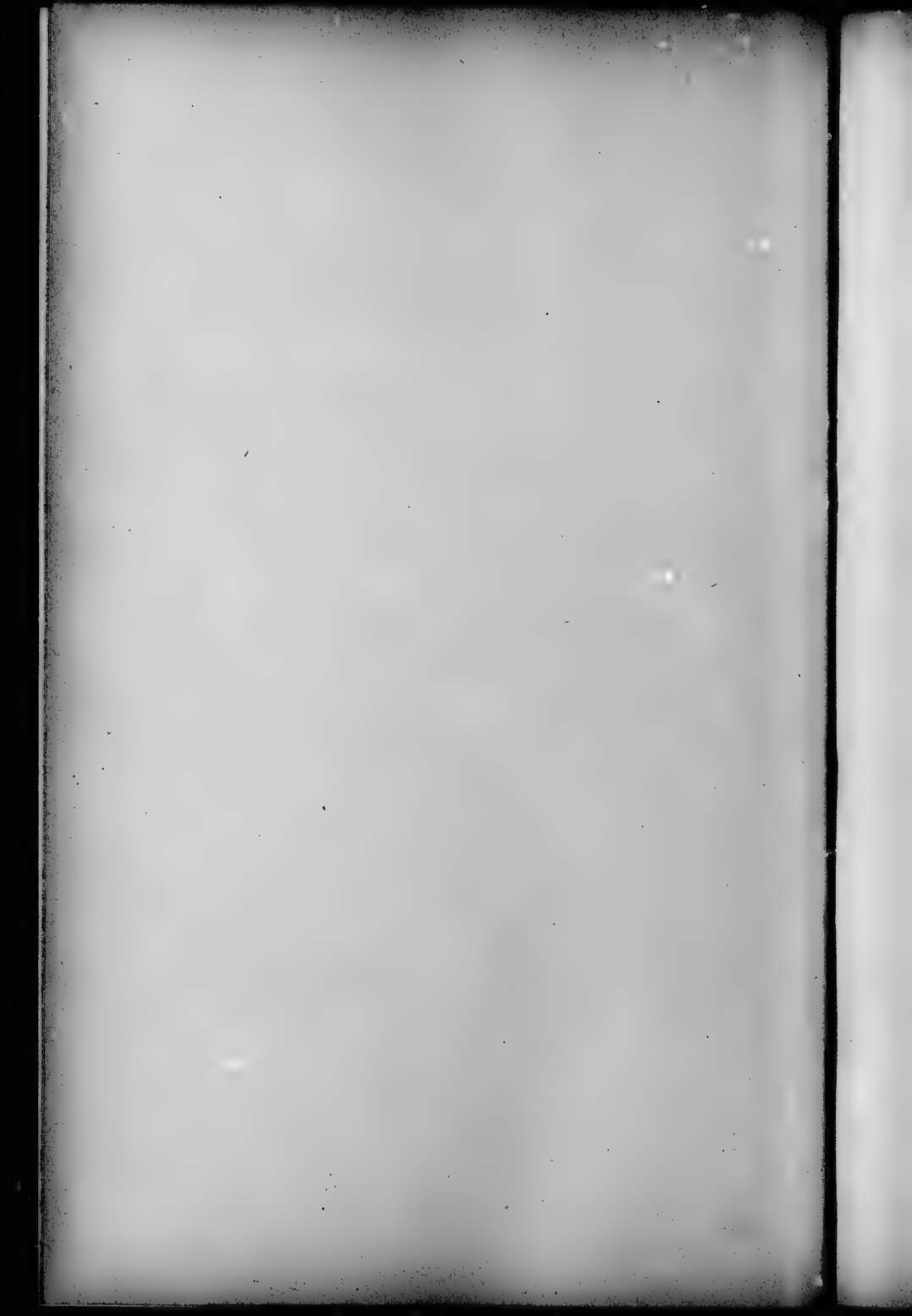
"The simple question presented is whether the United States has a right to protect its property and the business of its people from the wanton and barbarous destruction by foreigners which it has made criminal by Act of Congress.

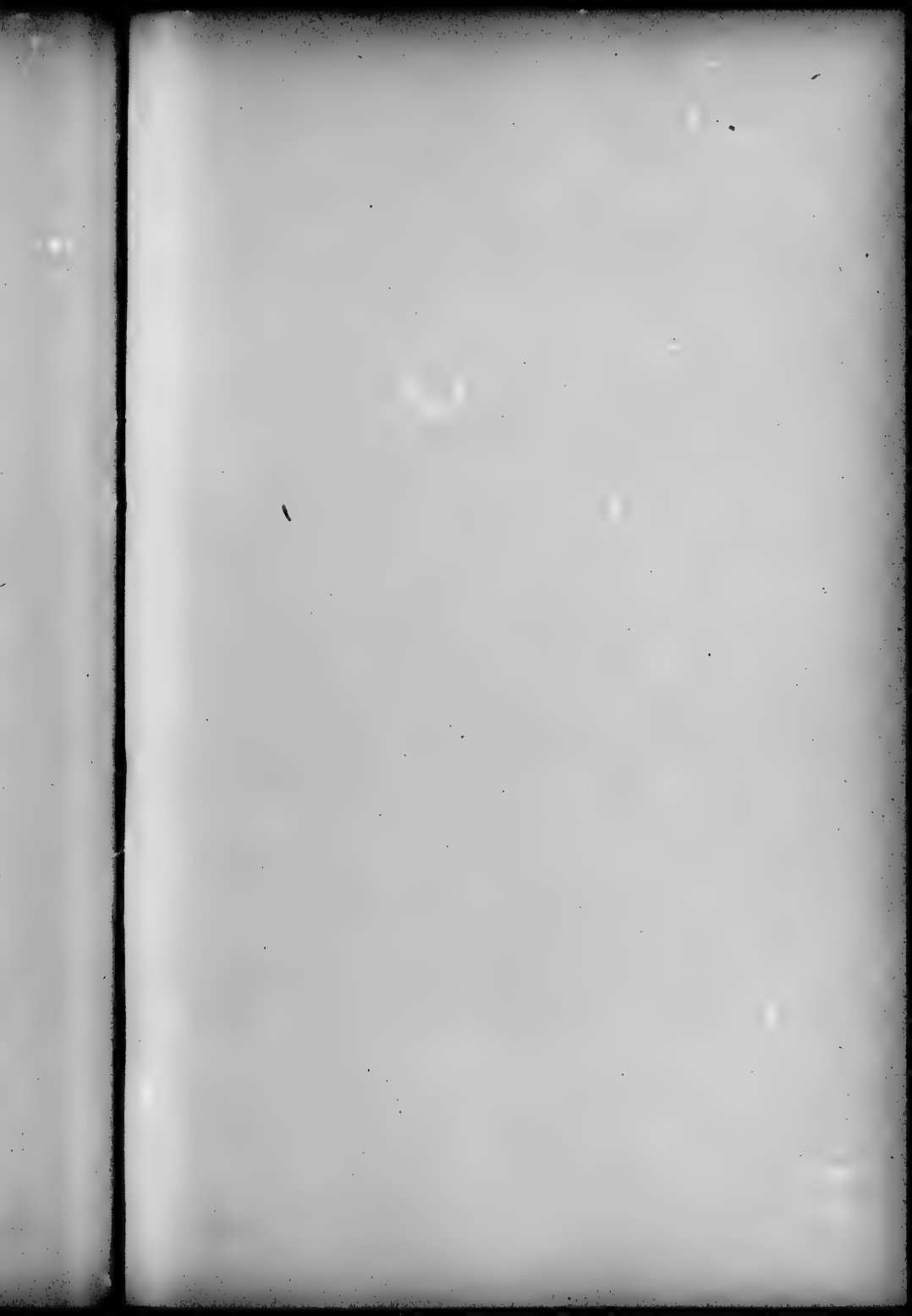
"These animals, as has been pointed out, are a large and valuable property, an established and proper source of public and private revenue and of useful industry."

Still further, in reviewing briefly the general aspects of the question in his opening remarks, he writes:—

"The Alaskan fur-seal fishery is the most important in the world. It was a material element in the value of that

"Harper's
Magazine,"
April 1891.





province when purchased by the United States from Russia, at a heavy cost, and one of the principal inducements upon which the purchase was made."

The context of the first-quoted passages show that the theory of property is based, in so far as it is propounded by Mr. Phelps, on fundamentally erroneous conceptions of the habits and migrations of the fur-seals. It is stated, for instance, that the seal—

"Is not a denizen of the sea alone, still less a 'wanderer of the sea'. . . . It has a fixed habitation on the Alaskan shore, from which it never long departs. . . . It is the habit of this colony of seals to cross through the sea during breeding time to the Pribyloff Islands. . . . In making the passage the seals necessarily cross a portion of Behring Sea which is more than 3 miles outside of either shore. . . . It has been the custom for several years past for certain Canadian vessels fitted out for the purpose to intercept the seals on this passage while outside the 3-mile line, and to shoot them in the water."

From all which it would appear to be believed that the fur-seal spends most of its time ashore on the breeding islands, and that it leaves territorial waters somewhere, at the breeding season, merely to cross a certain extent of open sea. These and other points which seem to be assumed in this particular contention are more fully dealt with later.

The point raised in the last citation from Mr. Phelps' article appears, however, to be new, and may be disposed of at once. So far from the existence of the fur-seal having been a principal inducement for the purchase of Alaska by the United States, it is actually the fact that there is a singular and well-nigh complete absence of allusion to that animal in all the pleas urged at the time in favour of this purchase.

Mr. Elliott is particularly definite on this point. In his Report published in connection with the Tenth Census of the United States (pp. 68, 69), he writes:—

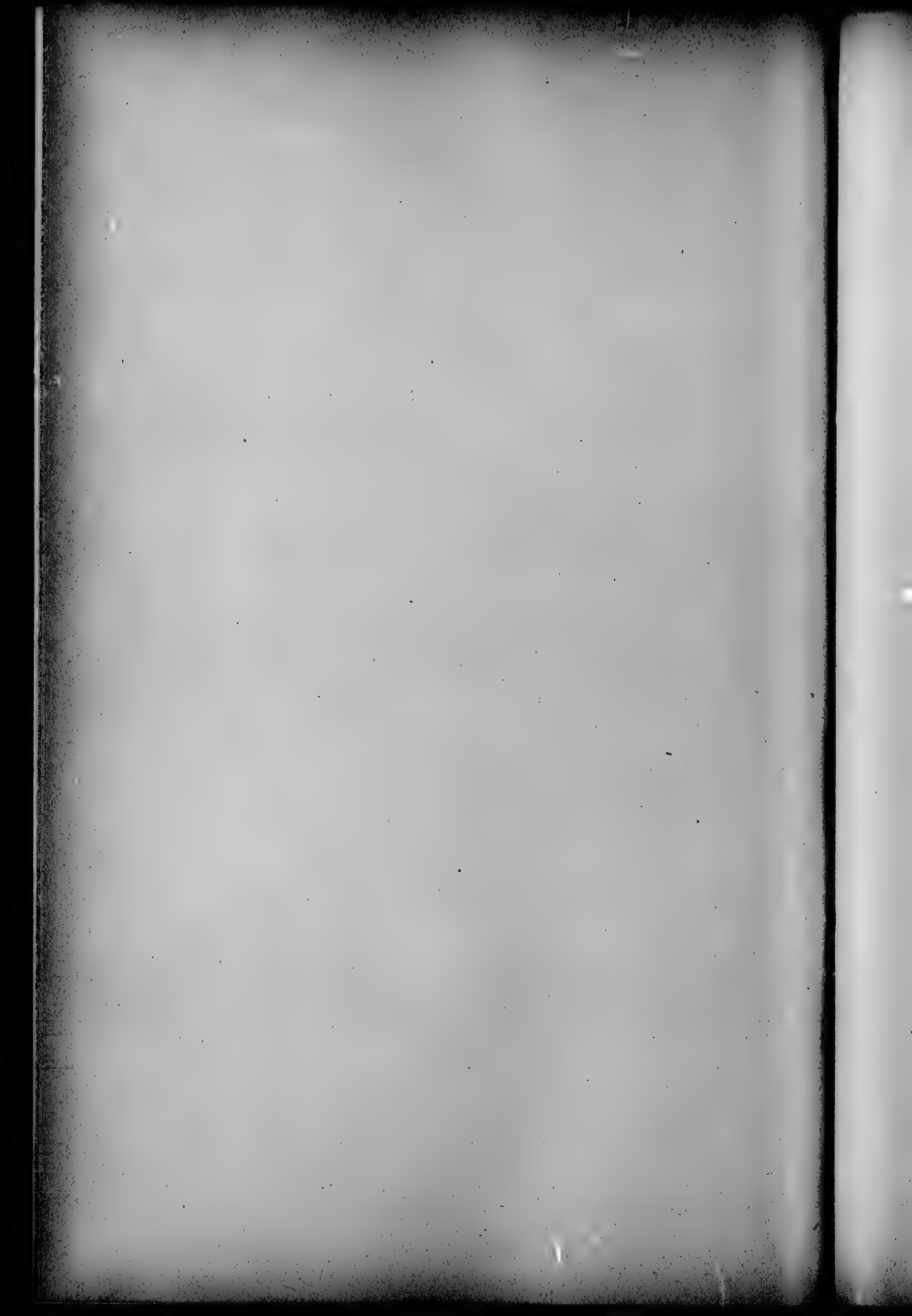
"STRANGE IGNORANCE OF THEIR VALUE IN 1867.—Considering that this Return [that obtained from seal-skins] is the only one made by the Government of Alaska since its transfer, and that it was never taken into account at first by the most ardent advocates of the purchase of Russian America, it is in itself highly creditable and interesting; to Senator Sumner the friends of the acquisition of this territory in 1867 delegated the task of making the principal argument in its favour. Everything that

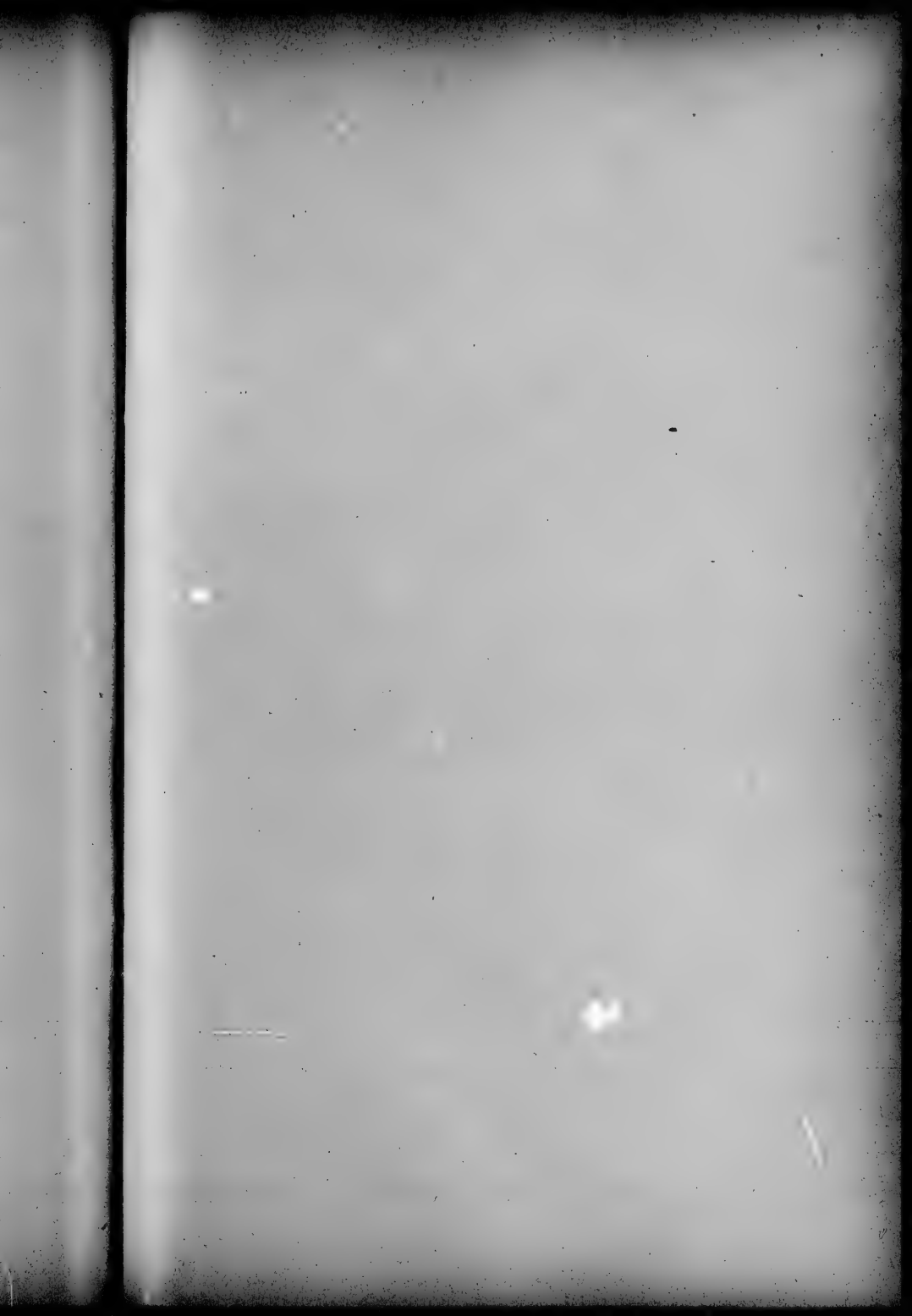
was written in strange tongues was carefully translated for the choice bits of mention which could be found of Alaska's value. Hence his speech on the subject possesses this interest; it is the embodiment of everything that could be scraped together having the faintest shadow of authenticity, by all the eager friends of the purchase, which gave the least idea of any valuable natural resources in Alaska; therefore, when in summing all this up, he makes no reference whatever to the seal islands, or to the fur-seal itself, the extraordinary ignorance at home and abroad relative to the Pribyloff Islands can be well appreciated."

The passage cited previously from Elliott has, however, at least the merit of formulating a definite claim with reference to property in seals. But it is submitted that merely to state such a claim in plain terms is to show its untenable character, for the assumption is made that the United States can, by its individual action, and under cover of a domestic law, control the rights of other Powers upon the high seas. The claim, it is true, is in this instance made only in respect to seals; but any such principle once acknowledged might, on very similar grounds, be extended to other fisheries, and more particularly to the taking of salmon or other fishes at sea, the natural breeding-places of which are found in rivers, and thus within recognized territorial limits. Apart from the ordinary limits of marine jurisdiction attaching to coast-lines, or to some exceptional claim to areal jurisdiction over some tract of sea, however limited or bounded, there is absolutely no precedent for the assumption of the right to property in a free-swimming animal, the course of which is uncontrolled, and not controllable by man.

The only known analogous cases in which a right of property in seals has been defined or declared is found in the Newfoundland Act, entitled "An Act to regulate the Taking of, and right of Property in, Seals" (52 Vict., cap. 23). Even here the enactment applies only to vessels going from or returning to Newfoundland ports. The clause referred to is as follows:—

"I. In any action or proceeding for the recovery of, or in relation to, the property in seals or seal pelts, killed by persons engaged in or prosecuting the seal fishery in steam-vessels going from, or coming to, the ports in this Colony, it shall be held that no property, or right of property, shall have accrued except in seals killed, sculped, panned, or bulked, by and in the actual charge of the





claimants, or some person or persons for them working, or engaged in carrying away such seals or seal pelts.'

In effect, therefore, this Regulation merely puts into precise terms, conformably to the nature of the operations in the region to which it applies, the general principles previously referred to.

On the other hand, and still referring to seals, it can be shown that the United States has more than once distinctly asserted the fur-seal fishery to be part of the ocean fishery, even claiming that, unless under exceptional circumstances, it should be free not alone without, but also within, the 3-mile limit.

The United States' Government on no occasion since the acquisition of the Pribyloff Islands in 1867 has attempted to enforce such a principle by legislation or otherwise either on behalf of itself or of its lessees of the islands.

The law for the protection of the seal islands has never been enforced either against vessels of the United States or other countries outside of Behring Sea; therefore a large part of the year they are found all over the waters of the North Pacific.

From the official correspondence, it has been made clear that the suggestion embodied in this question is an after-thought.

Mr. Elliott's contention in respect to "property" in fur-seals further appears to depend essentially on the supposition that all fur-seals found in the North Pacific are "begotten and born" on the Pribyloff Islands belonging to the United States, and though not equally clearly advanced by Mr. Blaine, the contention of the United States' Government to the same effect appears also to rest on this or very similar premises.

In opposition to such claim, it may be said (1) that such premises are unsound, and (2) that, even if sound, the conclusions are unwarranted, either in law or on grounds of equity or precedent.

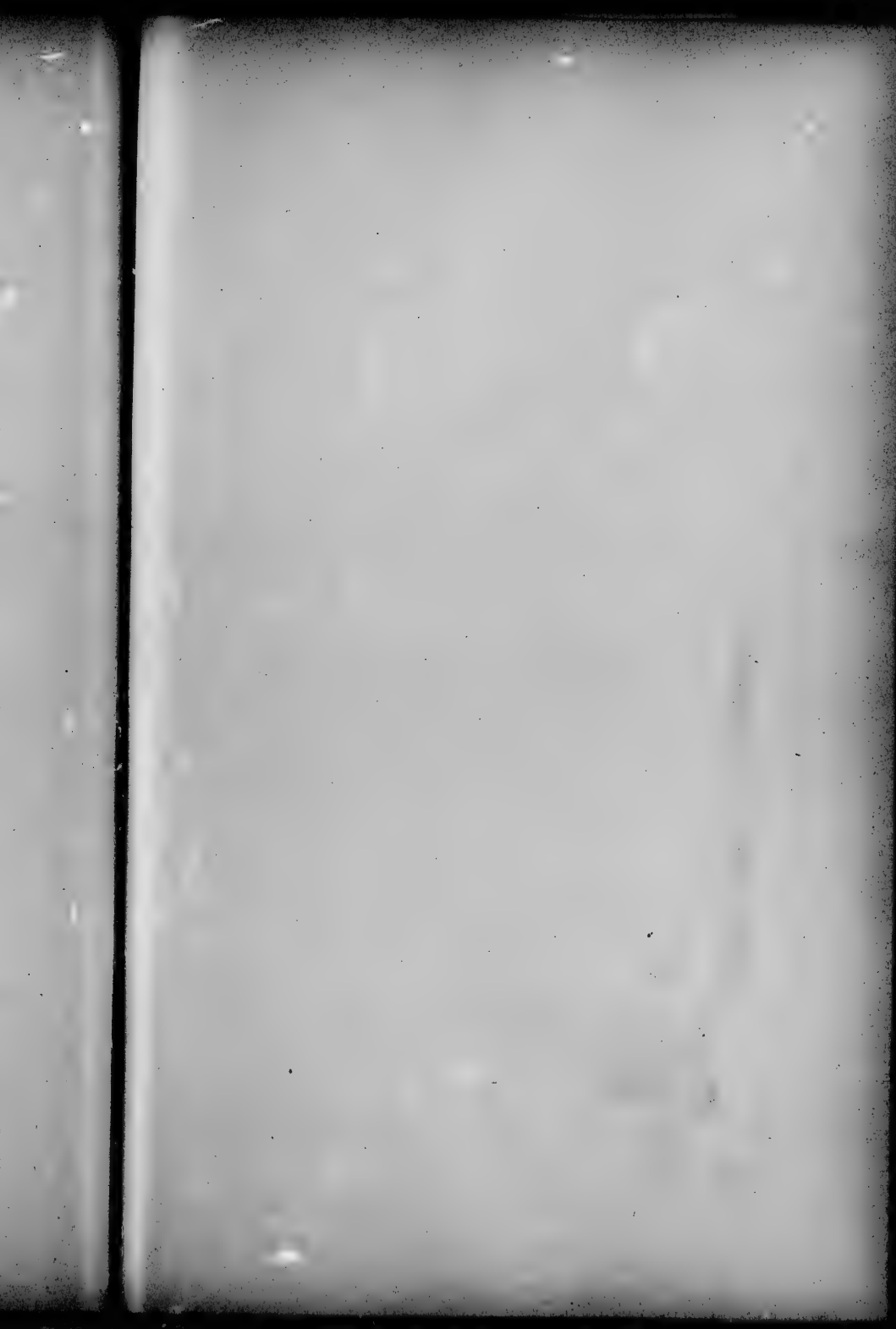
(1.) The Pribyloff Islands, upon which all the breeding rookeries belonging to the United States are situated, are not the only similar breeding rookeries in the North Pacific. Those of the Commander or Komandorski Islands (Behring and Copper Islands) were discovered some years earlier by the Russians, and have ever since been

frequented by large numbers of breeding seals, and have yielded important annual returns of seal-skins. Robben Island, near Saghalien Island, in the Okotak Sea, has likewise been, ever since its discovery, occupied as a breeding rookery, and large numbers of skins have been obtained from it, notwithstanding the injurious effects produced by raids upon its shores, which have been chiefly attributable to citizens of the United States. Considerable breeding rookeries likewise existed on several of the Kurile Islands within the territorial jurisdiction of Japan and Russia, and some of these still survive, though in much diminished form, consequent on the effect of raids and illegal and impolitic destruction on the shores of these islands themselves. It is moreover certain that the fur-seal formerly resorted for breeding purposes to several places situated on the coast of British Columbia, and it is highly probable, if not absolutely certain, that a considerable number of young seals is still annually brought forth on various outlying parts of this coast.

Leaving aside, however, all doubtful or relatively unimportant cases of existing breeding places, we have the indubitable fact that a large proportion of the whole number of fur-seals frequenting the North Pacific are brought forth on the Commander Islands, still belonging to Russia.

Thus, to establish even a colourable claim to "property" in any particular seals taken at sea, or to seals thus taken in any defined area, it becomes necessary to prove that such seals have been brought forth on certain specified islands within the territorial jurisdiction of the United States. No mere assertion on this point can be accepted. The onus of proof devolves naturally on those making such a claim, and from the very nature of the circumstances such proof is, it is submitted, impossible. Any exception to a so general claim, however small, must be considered as sufficient technically to invalidate it, and even if in any particular year it should by some means be found practicable to substantiate the contention involved, that all seals met with in the eastern part of the Pacific—say, east of the 180th meridian—had been born on the Pribyloff Islands, the circumstances of another season, whether those connected with wind or weather, or those resulting from the migratory movements of the





food-fishes of the seal, might in the following year change the conditions and the ownership of the seals in any given tract of sea.

The opinions already published by those who have given the greatest amount of attention to the habits of the fur-seal of the North Pacific are sufficient to show that there is a general agreement in respect to the *prima facie* probability of interchange and migration of seals between the principal breeding places.

It is now generally admitted that the same seals do not return necessarily or even usually to the same breeding ground year after year. Mr. Elliott quotes an experiment made by the Russians, in which 100 young males were marked at one locality on St. Paul Island. Next year some of the seals so marked were included in the catch from "every part of the island." In 1870, again, a similar experiment was made on the same island, and, respecting the 100 seals then marked, it is said:—

"Of this number, in the summer of 1872, when I was there, the natives found in their driving of 75,000 seals from the different hauling-grounds of St. Paul up to the village killing-grounds, two on Novostoshna rookery 10 miles north of Lukannon [the point at which the seals had been marked] and two or three from English Bay and Tolstoi rookeries, 6 miles west by water; one or two were taken on St. George Island, 36 miles to the south-east, and not one from Lukannon was found among those that were driven up from these."

Census Report,
p. 81.

The same, or a very similar, experiment is referred to by Captain Bryant.

In Monograph of
North-American
Pinnipeds, Allen,
p. 401.

In the Congressional Report on the fur-seal fisheries of Alaska, Dr. H. E. McIntyre likewise states that—

"The seals are found indiscriminately on the two islands, that is, seals born on St. George are found on St. Paul, and *vice versa*."

50th Cong., 2nd
Sess., H. R., 2883,
p. 128.

Apart from such definite experiments, and over wider areas where, so far, such experiments have not been possible, information as to changes in the resort of seals as between one and another of the various breeding islands in the North Pacific must depend largely upon the opinions of those who have had occasion to study the habits of the seal, and upon the general facts which such persons have noted.

Such interchange of seals between the various

breeding places may be supposed to occur in two ways: first, in correspondence with natural and casual events, such as winds, currents, and the pursuit of food-fishes; second, in consequence of the disturbance of the breeding places by man. On the latter point, Scammon, in his well-known work (p. 152), sums up the result of his observations as follows:—

"We may add, likewise, from our own observation, and as the expressed opinion of several experienced sealing masters, that their [the seals] natural migrations extend over a great expanse of ocean, and if they are unduly disturbed in their favourite haunts for several successive years, they are quite sure to seek some distant and unknown place where they can congregate unmolested by man."

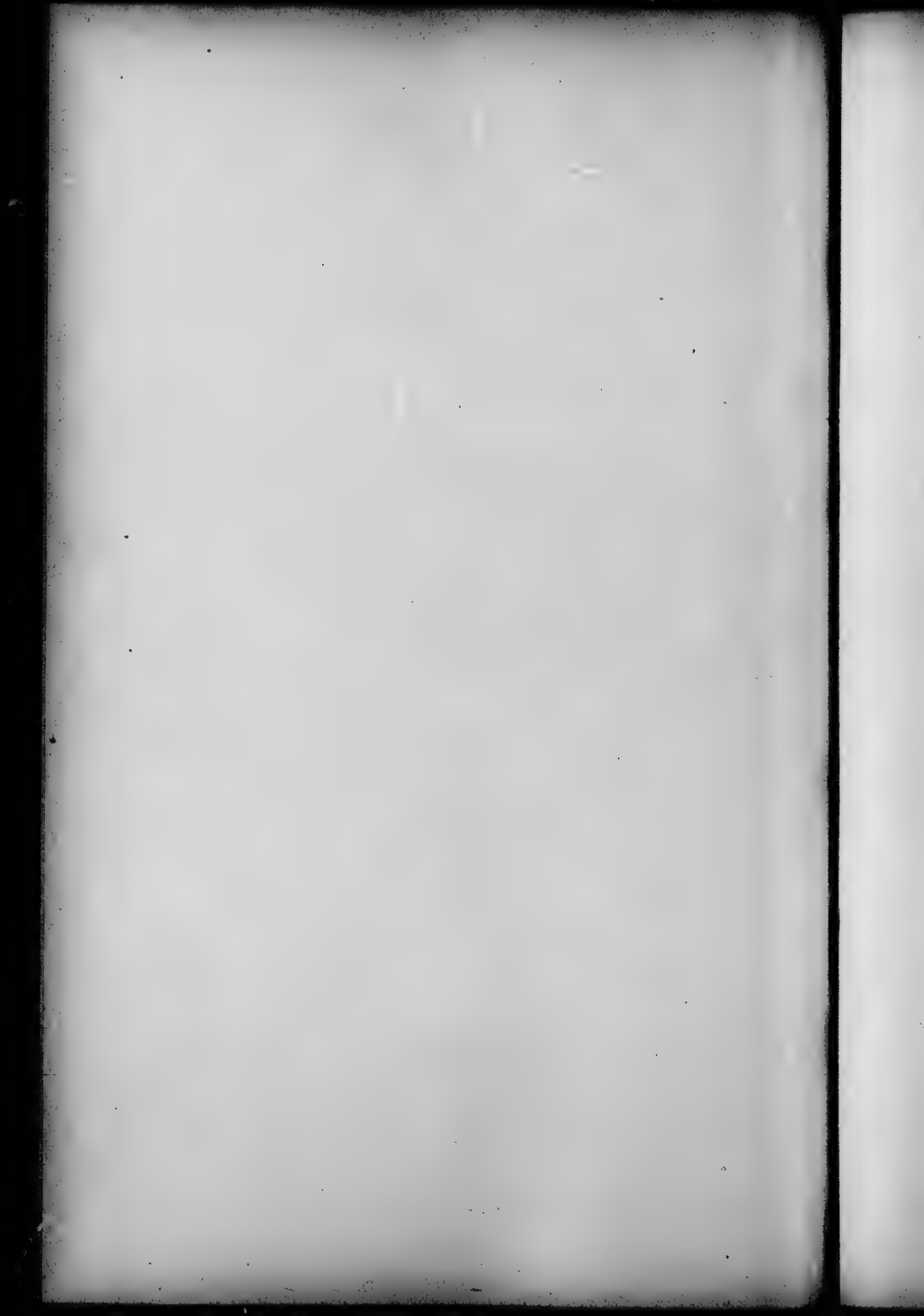
A further reference, with the same meaning, is found in the passage quoted from Elliott's Report on the previous page.

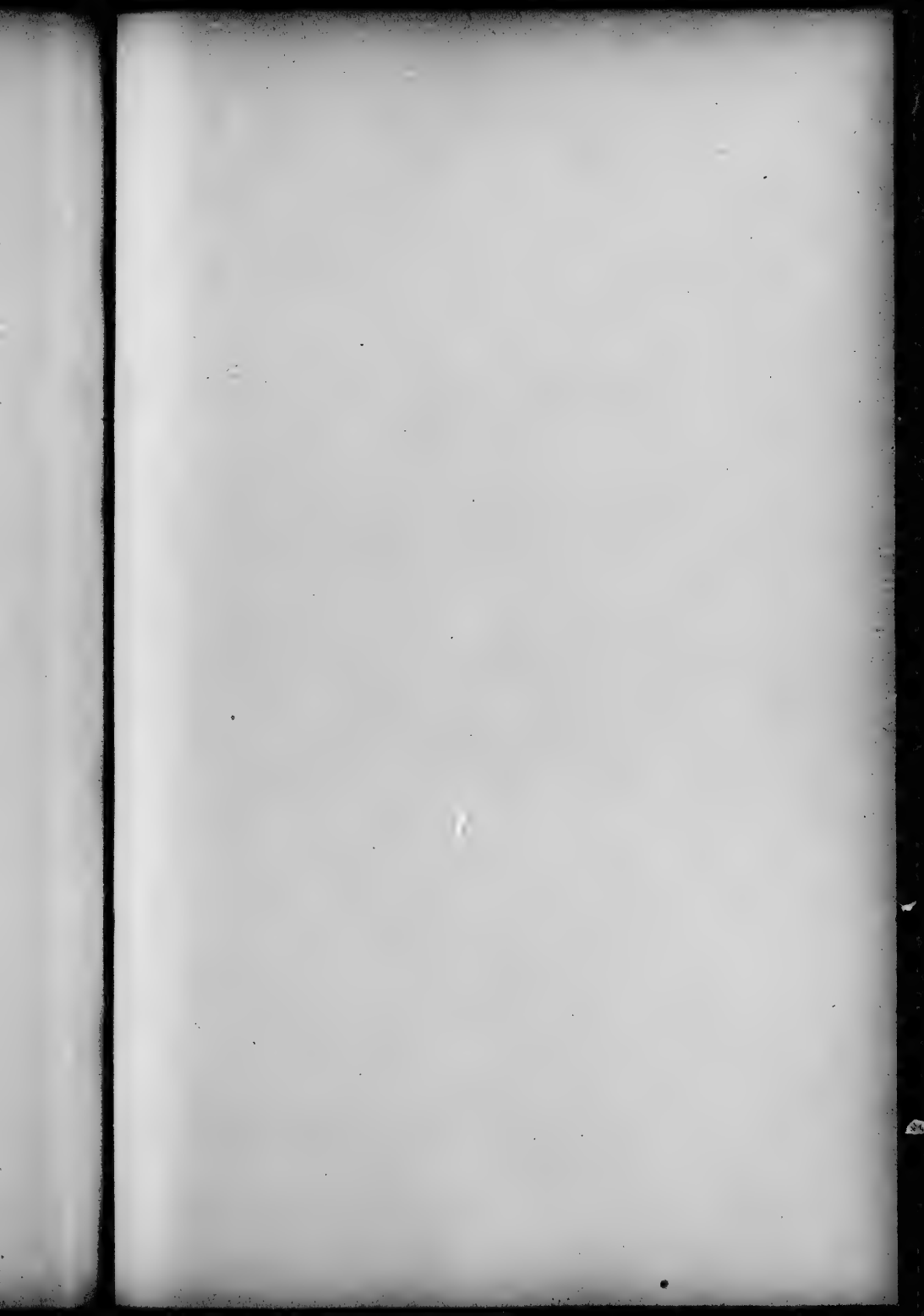
Mr. Elliott, in another part of the same Report (p. 69), after asking a question as to the possible accessions of seals to the Commander from the Pribyloff Islands, replies to his own question as follows:—

"Certainly, if the ground on either Behring or Copper Island, in the Commander group, is as well suited for the wants of the breeding fur-seal as is that exhibited by the Pribyloff Islands, then I say, confidently, that we may at any time note a diminution here, and find a corresponding augmentation there; for I have clearly shown in my chapter on the habits of these animals, that they are not so particularly attached to the respective places of their birth, but that they rather land with an instinctive appreciation of the fitness of that ground as a whole."

The same writer, in his "Report on the Condition of Affairs in Alaska," 1875 (p. 265 *et seq.*), under the heading "Thoughts upon Possible Movements of the Fur-seals in the Future," treats the subject at some length, reaching very similar conclusions, and adding:—

"It is not unlikely that some season may occur when an immense number of the fur-seals which have lived during the last four or five years on the Pribyloff Islands should be deflected from their usual feeding range by the shifting of schools of fish, &c., so as to bring them around quite close to the Asiatic seal grounds in the spring, and the scent from these rookeries would act as a powerful stimulant for them to land there, where conditions for their breeding may be as favourable as desired by them."





In a Report on an investigation on the Alaska Commercial Company by a Committee of Congress, dated 1876, Mr. J. F. Miller, President of the Company, says that the seals upon the Pribyloff Islands—

"Maintain just about the natural increase very regularly; they do not seem to migrate."

But in reply to a further question as to whether they were not supposed at a former period to have been driven from the Pribyloff Islands to the Commander Islands, adds:—

"They no doubt were at one time. Some of them went over there, and where the others went we do not know, because they do increase upon the Russian islands; so history shows." 44th Cong., 1st
Sess., H. R.,
Report 263, p. 46.

In a Congressional Report on the "Fur-sea Fisheries of Alaska," dated 1889, Mr. S. M. Buynitzky gives the following evidence:—

"Q. What, in your judgment, from your experience of that business in these islands, would be the effect of opening up the business, that is, removing the restrictions so that everybody could go in there and kill fur-seals?—
A. The probable effect would be to drive the seals from these islands to the Russian group. 50th Cong., 2nd
Sess., H. R.,
Report 263, p. 16.

"Q. That is, driving them from the American islands over to the Russian islands?—A. That is the most probable effect. That was conceded at the time by all who studied the question. Secretary Boutwell knew that very well."

In the same Report (pp. 77, 78) Mr. C. A. Williams makes the following statements, which, though now known not to be entirely correct in so far as they appear to relate to the *origination* of rookeries on the Commander Islands, are worthy of quotation:—

"It was supposed at that time [early in the Russian régime] that the commencement of seal-life on the Islands of Behring and Copper probably took place by reason of the indiscriminate killing on those islands [Pribyloff], diverting the seal from their usual haunts, and making them seek some other localities.

"Q. Was there a large number of seals which left the Pribyloff group and went over to the Russian islands?—
A. You could hardly expect them to go in a body. There had hardly been sealing or seal-life to any extent on the Commander Islands or Copper and Behring. It had not attracted the attention of the Russians, but after the indiscriminate killing on the Islands of St. Paul and St. George, it was noticed that seal-life increased rapidly

on the other islands, and the supposition is a natural one that they were diverted from the islands on which they had heretofore been undisturbed, and sought other places."

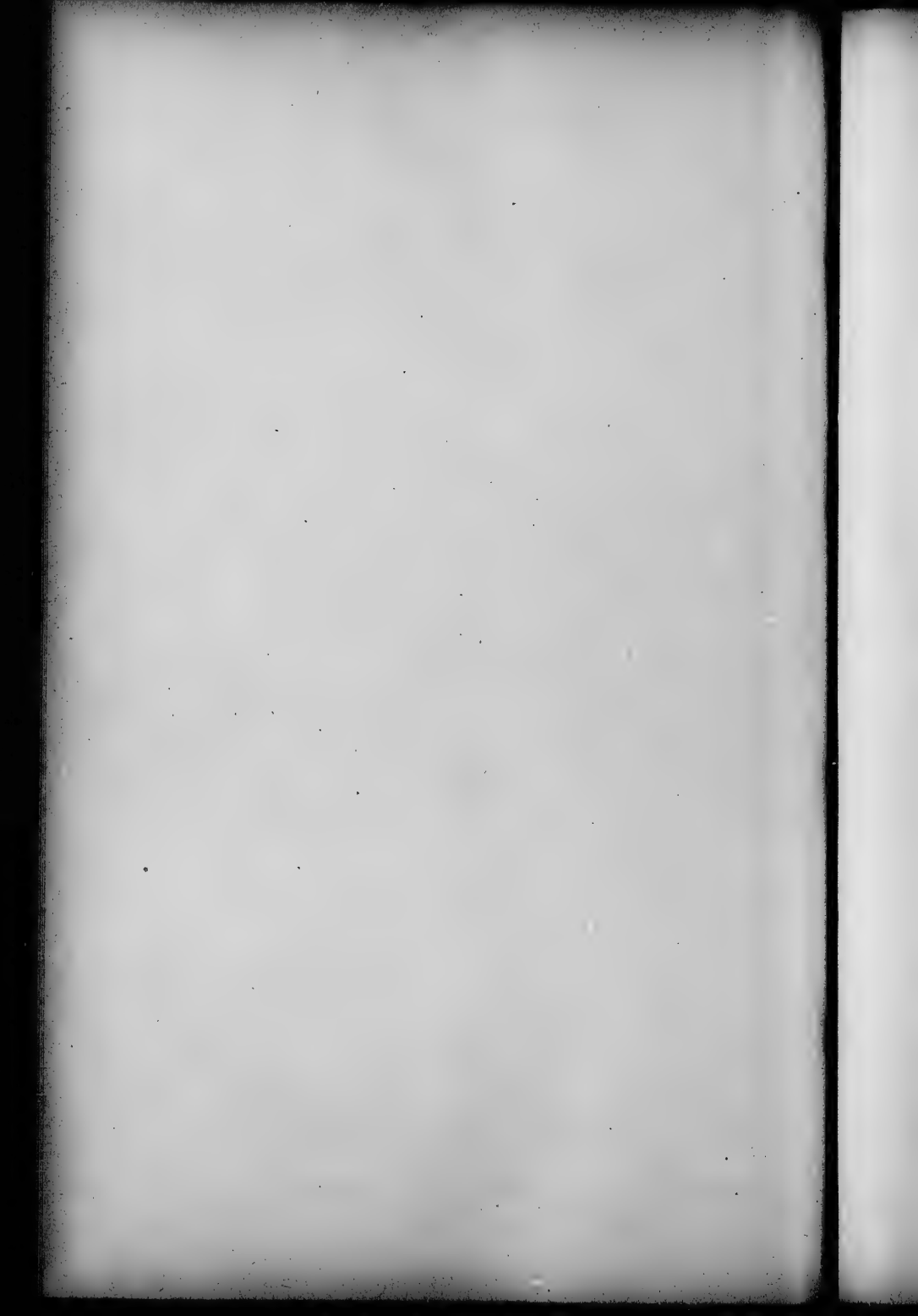
Though it is further claimed in the above-cited extract from Mr. Elliott's Report that the seals are not only born, but are also necessarily "begotten" on the Pribyloff Islands, and though it is, perhaps, not of importance from the point of view of *property* where the seals are begotten, there is abundance of evidence to show that this statement is unfounded.

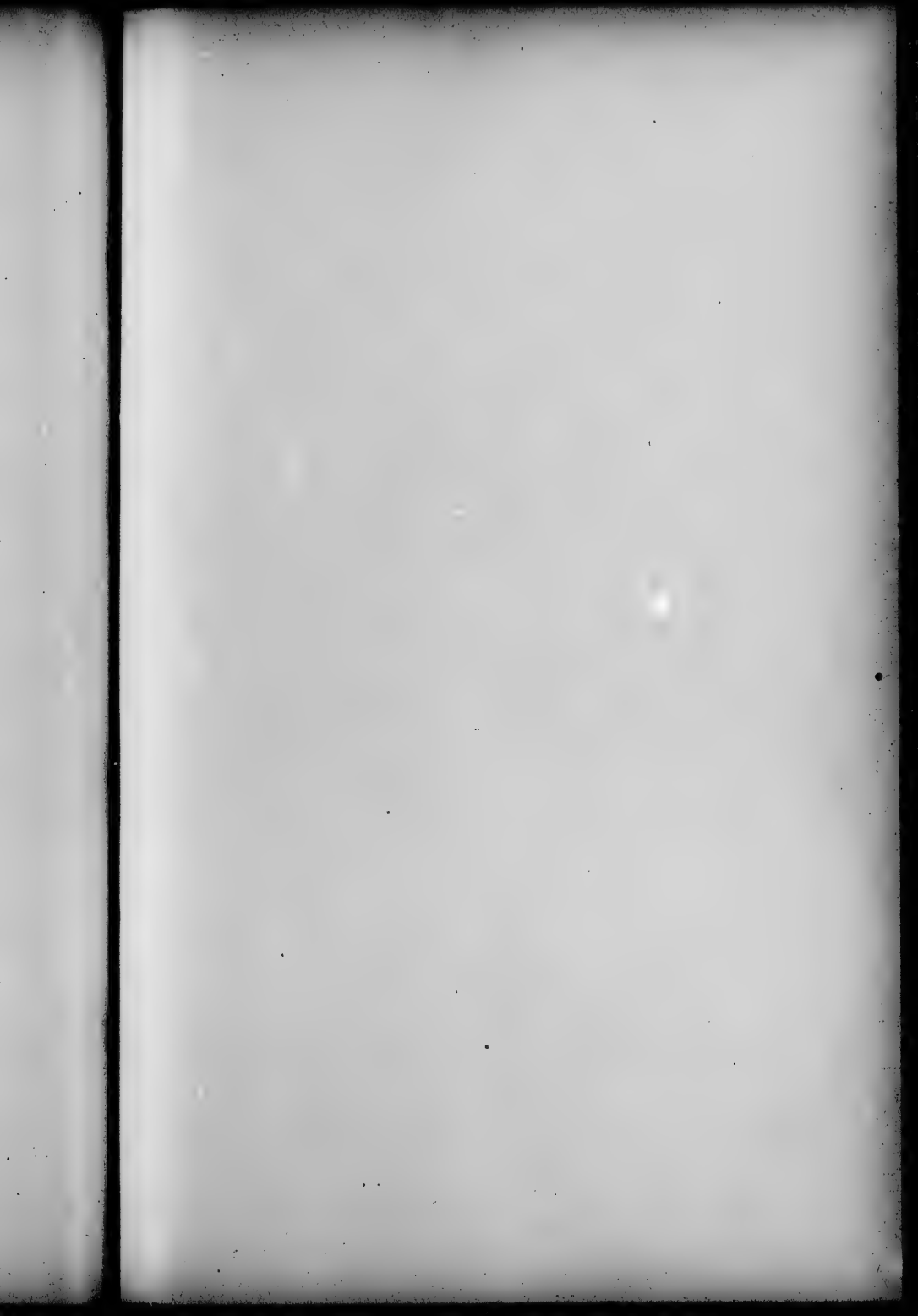
(2.) If, however, it be for the moment assumed, and for the sake of argument, that all fur-seals met with in the eastern part of the North Pacific—say, as before, to the east of longitude 180°—are not only begotten, but born and reared on the Pribyloff Islands, which islands are the property of the United States.—This circumstance does not establish any valid claim in law to a right of "protection," and far less to one of "property" in animals, *feræ naturæ*, thus produced. It is not known that any comparable claim has ever previously been asserted. An analogy of the most striking kind, and one which is particularly referred to by President Angell in this connection, and which likewise relates to the same North American region, is afforded by a number of the most important migratory birds employed as food. Many of these birds are almost exclusively, and some, so far as known, exclusively, born and reared in Canadian territory in the northern part of the continent, but spend a certain proportion of the winter half of the year within the territory of the United States. What would be thought of any claim made by Canada that such animals remained individually or collectively, wherever they may be found, under the protection of such municipal laws as she should enact for their protection or use?

To render the importance of this particular fact evident, and by way of verification in detail, the subjoined notes from a recognized authority on this subject may here be quoted. These are extracted from Dr. Elliott Coues's "Key to North American Birds," published in the United States in 1887:—

Cygnus Columbianus (common American swan):

"United States in winter and during the migration. . .
Breeds only in the high north."





Bernicla Canadensis (common wild goose):

"It breeds in various parts of the United States . . . but the great number of individuals pass further north to nest."

Anser gambeli (American white-fronted goose):

"North America, at large; breeding in the far north, wintering in the United States."

Chen hyperboreus (snow goose):

"North America, at large; breeds in high latitudes, migrating and wintering in the United States."

Bernicla brenta (Brant goose):

"United States, only in winter and during the migrations, when abundant. Breeds in high latitudes to the Arctic coast."

Dasila acuta (pin-tailed duck):

"Wintering and migrating in United States and beyond, breeding from northern borders northward."

Querquedula Carolinensis (American green-winged teal):

"Breeds from the northern borders of the United States. It is one of the earliest arrivals among the hordes of water-fowl that come thronging from the north in fall."

Also the greater and lesser scauf ducks, the ring-neck duck, red-head, canvas-back, all breed from at or about northern borders of United States northward.

Harelda glacialis (long-tailed duck):

"United States in winter only, breeding in high latitudes."

With further bearing on this point, and as showing in some particulars a very close analogy to the conditions actually met with in the case of the fur-seal, the following extracts from Mr. A. R. Wallace's classical work on the "Geographical Distribution of Animals," vol. i, pp. 26-28, may be quoted:—

"It is an ascertained fact that many individual birds return year after year to build their nests in the same spot. This shows a strong local attachment, and is, in fact, the faculty or feeling on which their very existence probably depends. For were they to wander at random each year, they would almost certainly not meet with places so well suited to them, and might even get into districts where they or their young would inevitably perish. It is also a curious fact that in so many cases the old birds migrate first, leaving the young ones behind, who follow some short time later, but do not go so far as their parents. This is very strongly opposed to the notion of an imperative instinct. The old birds have been before, the young have not; and it is only when the old ones have all, or nearly, gone that the young go too, probably following some of the latest stragglers. They wander, however, almost at random, and the majority are destroyed before

the next spring. This is proved by the fact that the birds which return in spring are, as a rule, not more numerous than those which came the preceding spring, whereas those which went away in the autumn were two or three times as numerous.

* * *

"It is assumed by some writers that the breeding place of a species is to be considered as its true home rather than that to which it retires in winter, but this can hardly be accepted as a rule of universal application."

After some further details relating particularly to the food of birds, he adds:—

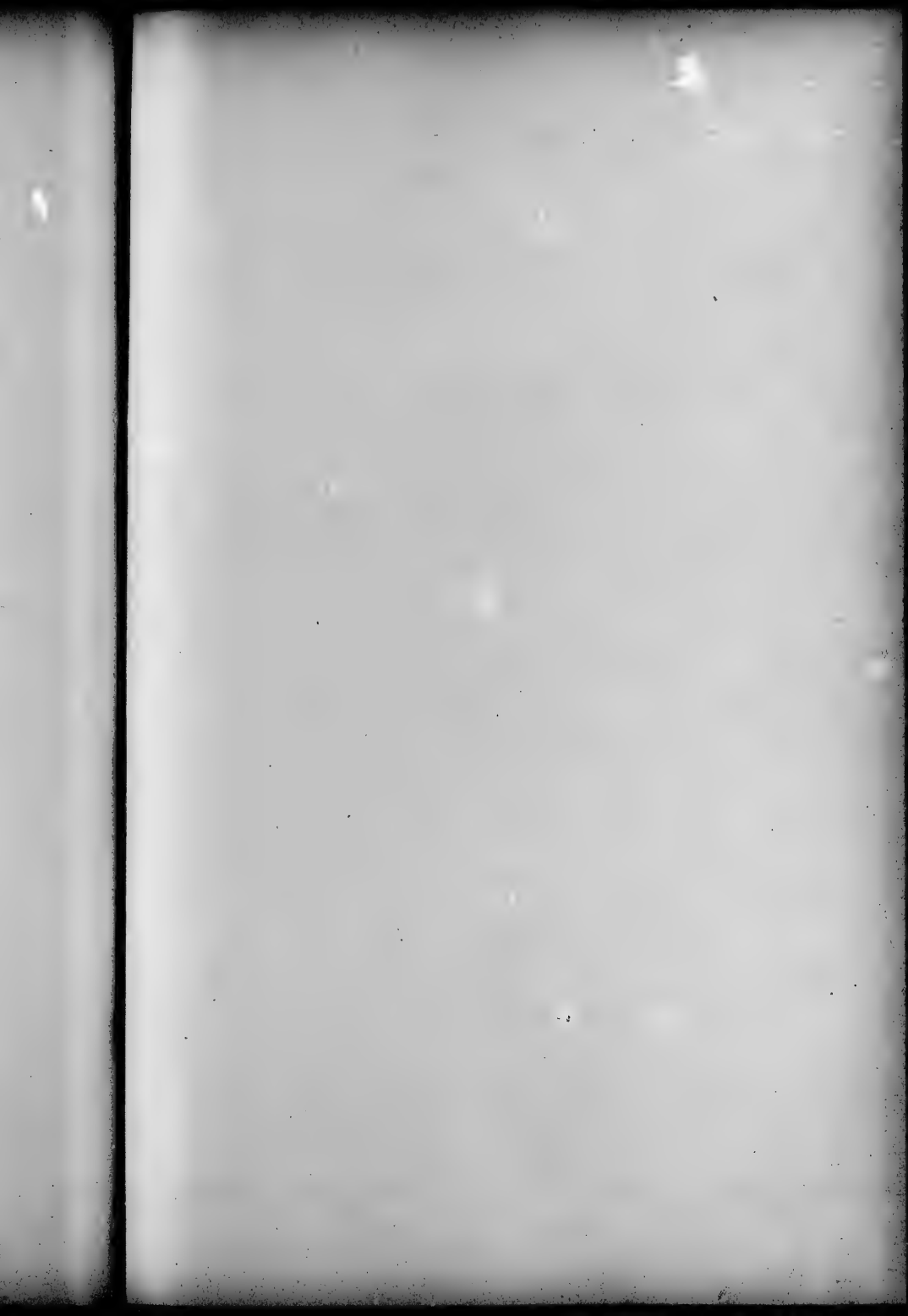
"For the purposes of the study of geographical distribution therefore, we must, except in special cases, consider the true range of a species to comprise all the area which it occupies regularly for any part of the year."

These remarks of Mr. Wallace are further of importance in showing authoritatively that from the point of view of the naturalist, the "home" or "habitat" of an animal cannot be properly restricted to the territory in which it is known to breed, and thus in disposing of a possible further argument which might conceivably be based on such an assumption.

An additional circumstance deserving of note under this particular head is found in the fact, now conclusively proved, that the great majority of the fur-seals met with in the eastern part of the North Pacific spend the months of winter and spring in that part of this ocean adjacent to the coasts of British Columbia, and that though the majority of these particular seals undoubtedly resort for a certain period in each year to the Pribyloff Islands to bring forth their young, they at this season abstain in great measure, if not absolutely, from feeding; while their sustenance is chiefly derived from the food-fishes which are to be found in their winter habitat. Such food-fishes, if not consumed by the seals, would be available for capture by, and for the support of, the inhabitants of the adjacent coast, and in consequence of this fact, these inhabitants must be considered as having an equitable if not a legal claim to become beneficious in the taking of the fur-seal. That the quantity of fish thus consumed must be very large is evident.

Mr. W. H. Elliott has made an attempt to estimate it, and states his belief that a full-grown male seal consumes per diem about 40 lbs. of fish,





adult females at least 10 lbs. or 12 lbs., and the rapidly-growing pups and young bachelors not much, if any, less. He adds:—

"Therefore, this great body of 4,000,000 or 5,000,000 Census Report, p. 64. hearty active animals which we know on the seal islands must consume an enormous amount of such food every year. They cannot average less than 10 lbs. of fish each per diem, which gives the consumption, as exhibited by their appetite, of over 6,000,000 tons of fish every year. . . .

"If the seals can get double the quantity which I credit them with above, startling as it seems, still I firmly believe that they eat it every year. An adequate realization by ichthyologists and fishermen as to what havoc the fur-seal hosts are annually making among the cod, herring, and salmon of the north-west coast and Alaska, would disconcert and astonish them."

If further support of the general statement that the fur-seal in its demands for food must very notably affect the number of food-fishes, it may be supplied by the following remarks bearing on the strictly comparable effects of the voracity of the common or "hair-seal" on the fisheries of Denmark, and the efforts made to remedy this source of loss to these fisheries:—

"Owing to rewards now granted by the Fishing Society of Denmark, amounting to 3 kroners for each seal killed according to the Copenhagen correspondent of our contemporary, 'Industries,' the extermination of seals is now being energetically pursued in Danish waters. It appears that in those localities where the fishery industry has been pursued with least success the seals most abound. A seal is seldom seen in the neighbourhood of Middlefart in the Little Belt, as the fishermen in that neighbourhood are very active in fishing and seal-hunting.

Extract, "Nautical Magazine," vol. lix, No. 11, November 1880.

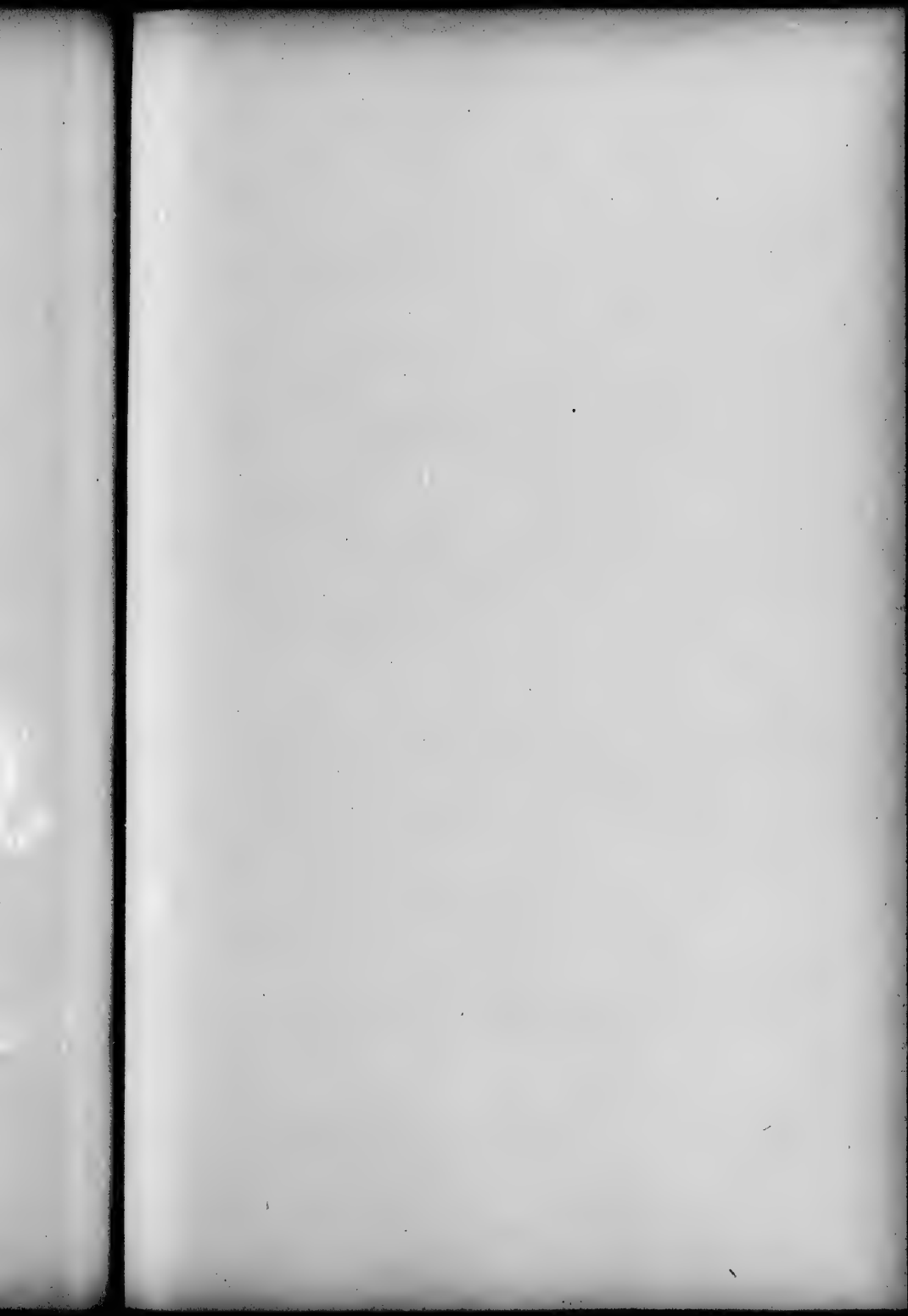
"*Au contraire*, on the small Island of Hosselo, north of Zealand, one man sent in the heads of no less than 120 seals, while another man sent in 40 within the last ten months. During this period 810 seals have been killed."

It must further be remembered in connection with this branch of the subject that, whether bred upon the Pribyloff or Commander or other islands, the actual time spent ashore by the seals on such breeding places, or in their immediate vicinity, is but a small part of the year, and that, even including the aggregate period during which the seals of all classes collect in the region of these breeding places, this represents less than half the cycle of the annual migration.

An additional argument in the interests of those claiming some exceptional monopoly in the benefits accruing from the taking of fur-seals upon their breeding places is supposed to have been found in insisting on the interests of the so-called "natives" of the Pribyloff Islands, which it is maintained must be taken into account. As a matter of fact, however, the Pribyloff Islands were uninhabited when discovered by the Russians, and a certain number of Aleuts were taken there solely for the purpose of obtaining the necessary labour for killing seals and curing the skins, in the interests of the Government or its lessees. The interests of these natives have at no time been allowed to conflict with those of the chartered beneficiaries of the breeding islands, and at the present time the official figures of the Eleventh Census of the United States show that these people, composed partly of the descendants of those originally deported thither by the old Russian Companies, and in part of more recent importations from the Aleutian Islands, number scarcely more than 300 in all. These inhabitants of the Pribyloff Islands have, in the course of events, become as a rule either half or three-quarters European in blood, but unfortunately without attaining a comparable advancement in knowledge or improvement in their mode of life.

Still further, it must be noted that the regulations now imposed prevent the people of the same race, and often the close relatives of the inhabitants of the Pribyloff Islands, but who still remain in the Aleutian Islands, from killing the fur-seal, even for food, though such killing must be regarded as among their primitive rights. The Indians of the coast of British Columbia have likewise been accustomed from time immemorial to hunt the fur-seal for food and skins. The development of what is now known as "pelagic sealing" has already, by affording remunerative employment to many of them, materially aided in their advancement, and the money gained by these people actually constitutes a large part of the entire support of most of the Indians inhabiting the west coast of Vancouver Island, numbering several thousands. The number of Indian hunters of British Columbia alone, at the present time engaged in pelagic sealing, is about 400, and it is estimated that the amount of money gained by these men annually





is probably about 40,000 dollars. This does not include the gains made by independent Indian hunters off the British Columbian coast who pursue the fur-seal in their own canoes from these shores, and which cannot be placed at less than 30,000 dollars annually.

In so far as native and primitive vested interests in the fur-seal fishery go, therefore, not only are those of the Indians of the British Columbian coast, together with those of the Makah Indians of the adjacent State of Washington, and that of the autochthonous Aleuts of the Alutia of the same name, the more direct and legitimate, but quantitatively valued they are much the more important. Yet any claim to exclusive property in seals derived from the possession of the Pribyloff Islands, or from any other circumstances, implies an arbitrary denial of the title of these native peoples to their prescriptive right in hunting this animal.

The known facts regarding the extraordinary profits derived by the lessees of the Pribyloff Islands for twenty years or more, together with the large sums accruing to the United States' Government in the shape of rent and taxes on the skins taken by the lessees, go far toward establishing an assumption against the strictly philanthropic motives which are at the present time prominently advanced.

A singular contrast is found to the mode of procedure by the United States respecting sealing in the Pacific, in that adopted by the same Power in the case of the mackerel fisheries of the Atlantic. Here, although the use of the engine known as the *purse seine* threatens the very existence of these fisheries, the Government has only endeavoured indirectly to control its own citizens in such use, by enacting that no fish taken before a given date may be landed at its ports. If the action taken in Behring Sea is justifiable, surely it would be equally justifiable, and on like grounds, to seize vessels found in possession of purse seines anywhere within the mackerel fishing area of the Atlantic. It would be sufficient to affirm that the use of such engines was *contra bonos mores*, and that action was taken in behalf of the human race.

The Greenland seal-fishery was prosecuted chiefly from Dundee and Peterhead in Great Britain, and from Norway.

In 1874 the Swedish Government suggested to

Great Britain that some international arrangement might probably be attempted with a view of imposing restrictive regulations to remedy evils attending the practices of sealers and particularly the killing of female seals found resting upon the ice with newborn young, in consequence of which great numbers of young seals perished.

Parties interested in sealing, both in Great Britain and Norway, were at once consulted, and an Act ("Seal Fishery Act, 1875") was passed empowering Her Majesty the Queen by Order in Council to fix a close season within an area between 67° and 75° north latitude and 5° east and 17° west of Greenwich.

Representations were then made by Great Britain to foreign countries which might be interested, with a view of insuring reciprocal legislation on their part.

In 1875 the Governments chiefly interested, Norway, Germany, Holland, and Sweden, expressed a willingness to provide the necessary legislation.

From other Governments Great Britain received favourable replies, but from that of the United States the answer was as follows, and no other action was taken by that country:—

"Department of State, Washington,

"Sir,

"October 1, 1875.

"Referring to your note of the 19th August and its accompaniments in relation to an Act of Parliament providing for the establishment of a close time for seal-fishing in the waters adjacent to the eastern coast of Greenland, I have to thank you for the information, and have the honour to inform you that, after consultation with the Secretary of the Treasury, it is the opinion of the Treasury, as well as of this Department, that the questions suggested in your note should be submitted to the attention of Congress.*

"I have, &c.

(Signed)

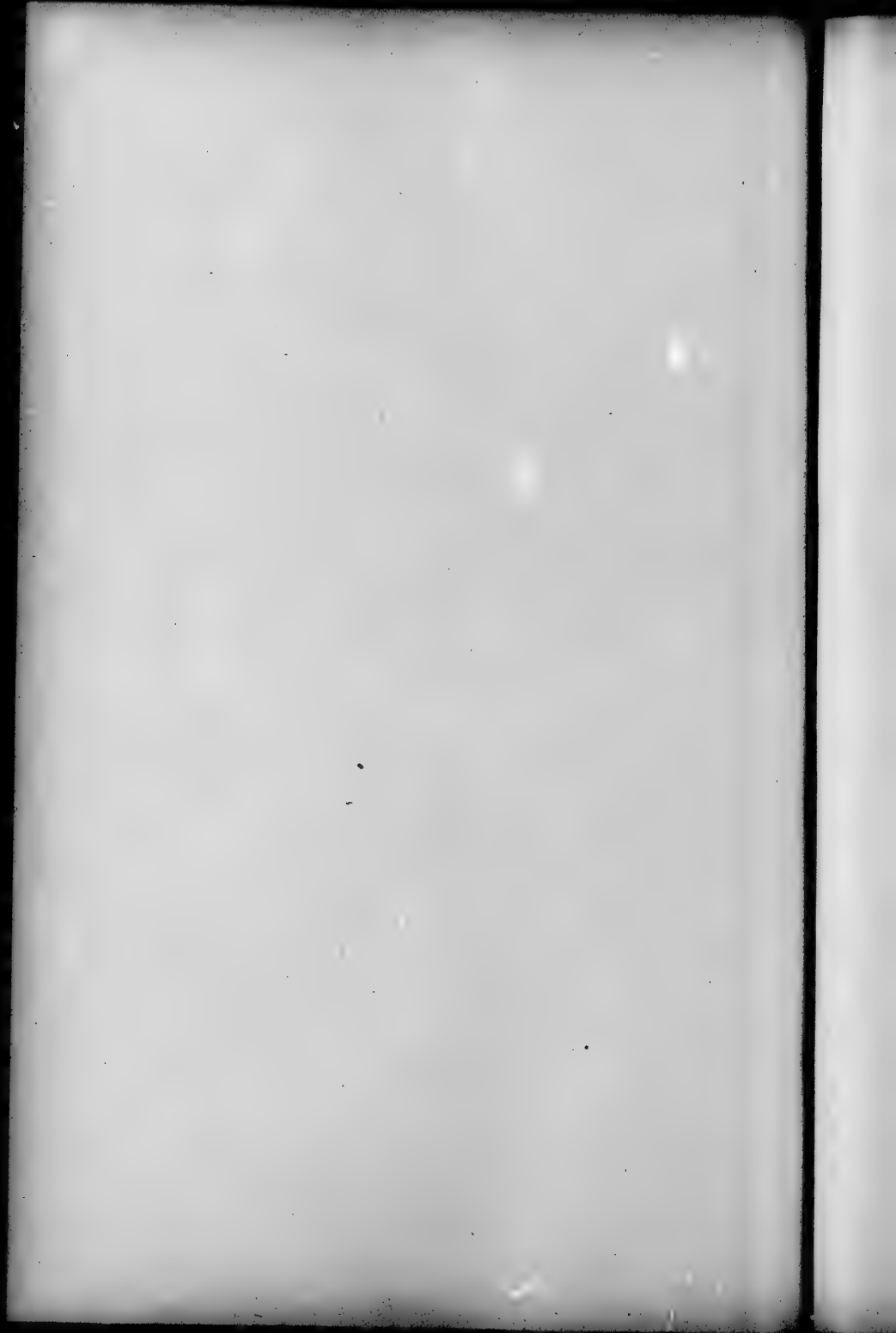
"HAMILTON FISH.

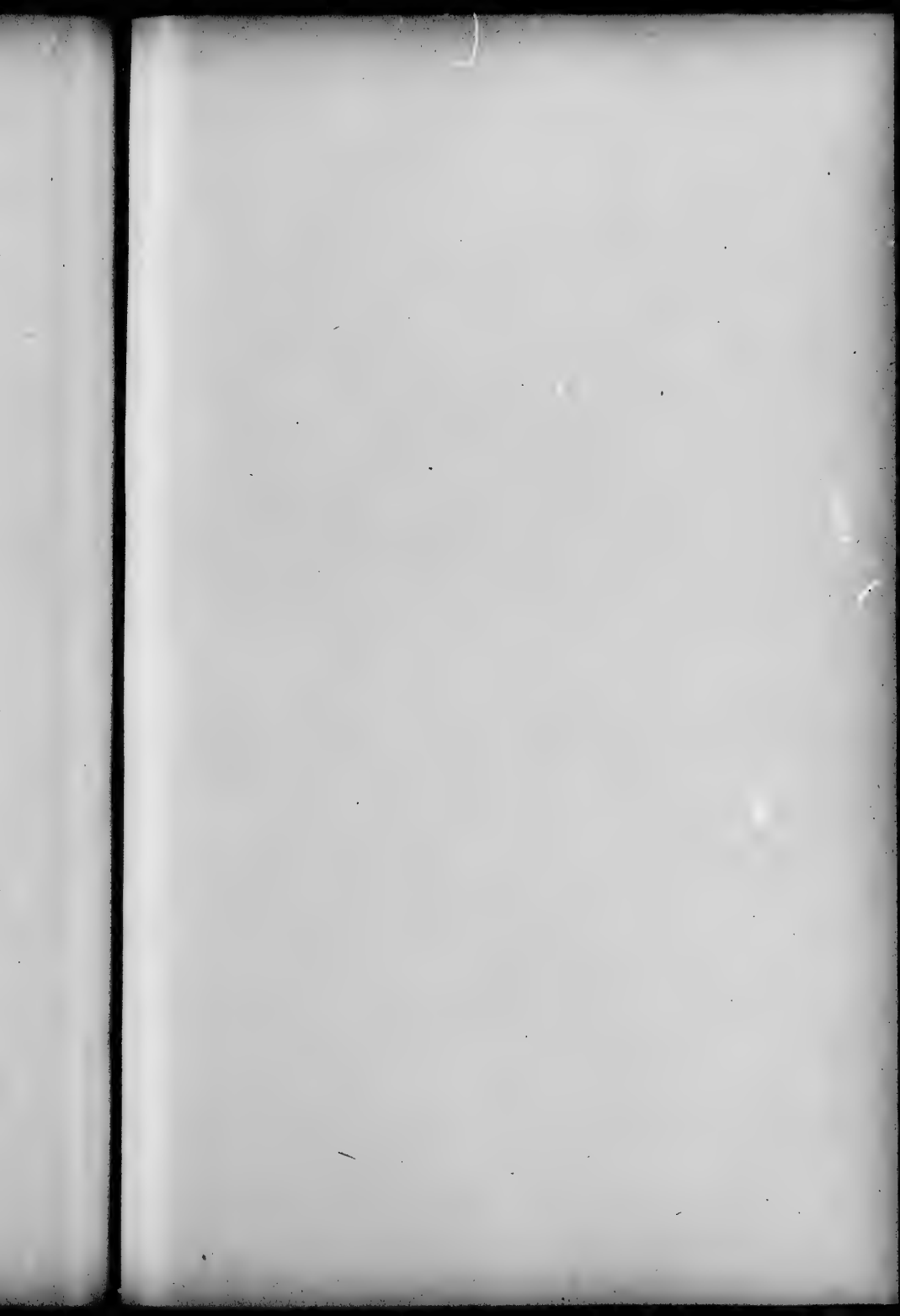
"The Right Honourable

"Sir E. Thornton, K.C.B."

An Order in Council, in 1876, was passed in Great Britain, so far as British subjects were concerned, but was revoked on ascertaining that no action could be taken in Norway in that year. In November of the same year, a new Order in Council was, however, passed.

* There is nothing to show that this was ever done.





By March 1877 the Governments of Norway, Sweden, Germany, and Holland had all taken similar legislative action to that of Great Britain.

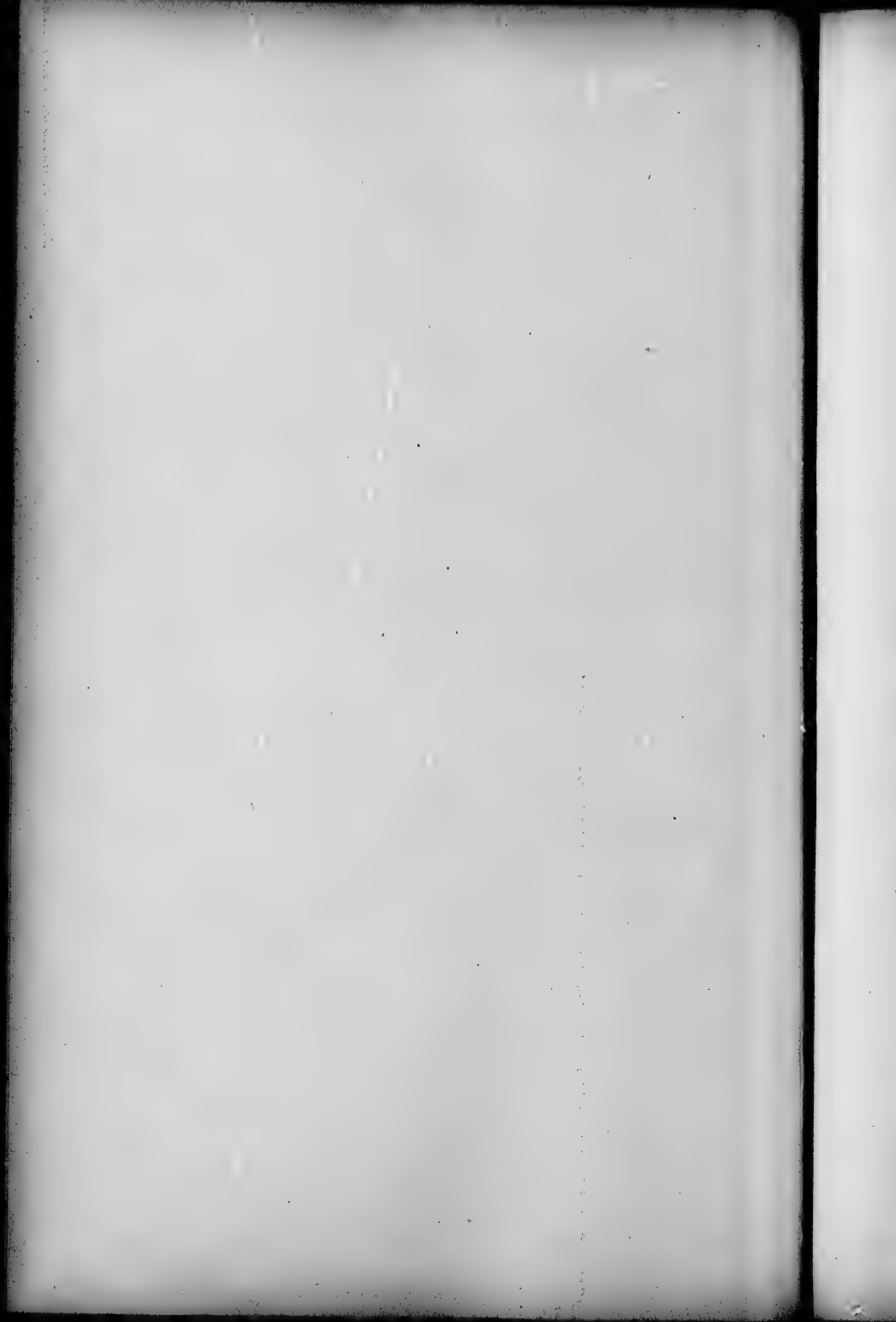
In 1879 Russia issued similar restrictions on her own subjects.

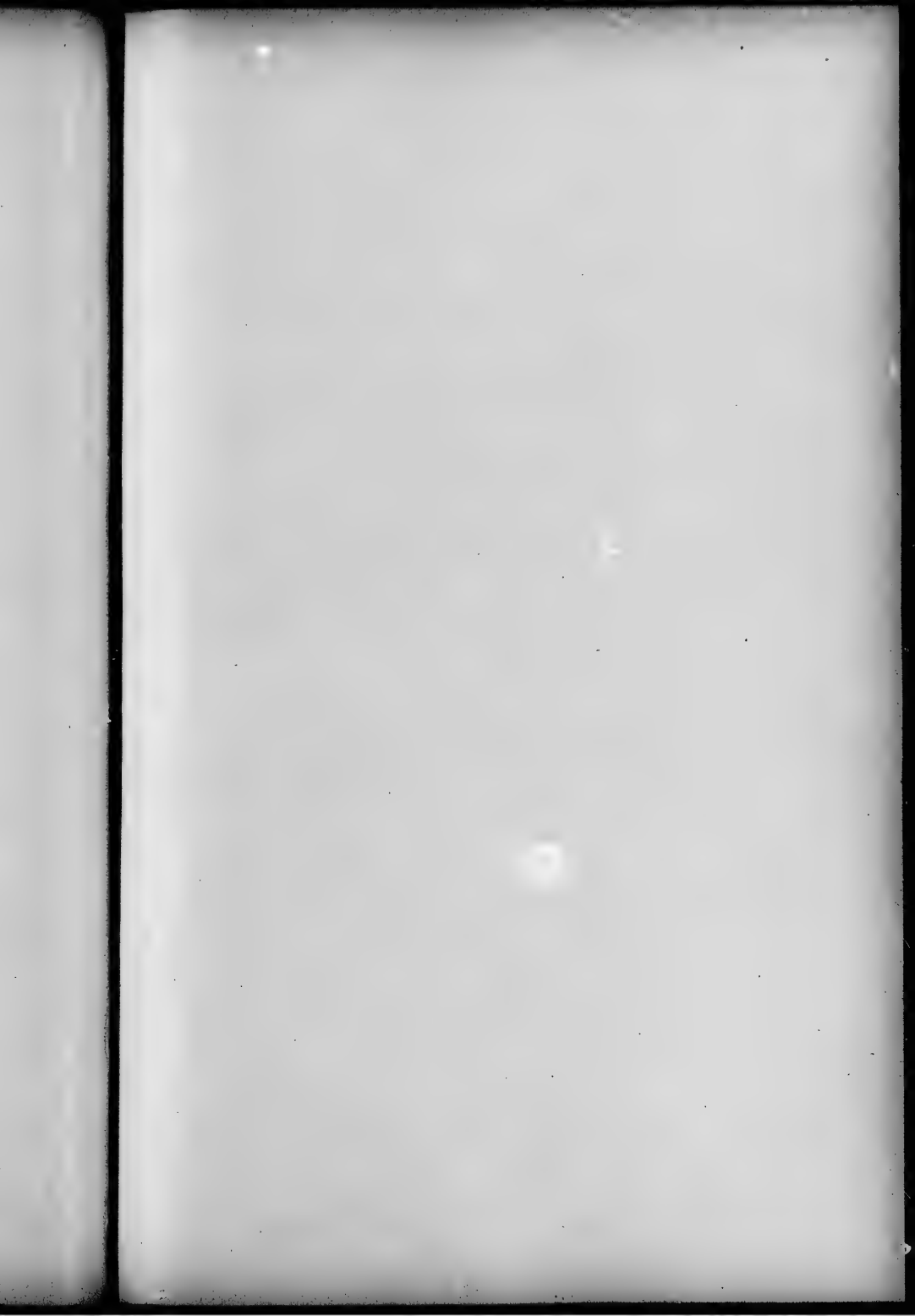
2024
—

BEHRING SEA ARBITRATION,

QUESTION 3 OF CASE.

- I. Authorities and Citations as to the phrase *Pacific Ocean*.
 - II. Notes bearing specially on the terms *North-west Coast of America* and *North-west Coast*.
 - III. Memorandum on the Maps referred to in the Correspondence respecting the Ukase of 1821.
 - IV. List of Maps cited by Mr. Blaine, December 17, 1890.
 - V. Notes on various Maps examined in connection with the usage of the phrase *Pacific Ocean*.
-





BEHRING SEA ARBITRATION.

QUESTION 3.—*Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said Treaty?*

Mr. Blaine to Sir
Julian Pauncefote,
December 17,
1890.

IT has been claimed on the part of the United States that (1) in the negotiations of 1824-25, Behring Sea was understood by the three Signatory Powers concerned to be "a separate body of water, and was not included in the phrase 'Pacific Ocean;'" and that (2) by long prescription the words "North-west Coast" mean the coast of the Pacific Ocean between 60° north latitude and 54° 40' only.

This latter assumption is necessary if the former be maintained, because of the numerous references to freedom of navigation and trade on the North-west Coast which occur in the discussion of the subject previous to the Conventions of 1824 and 1825 between Russia and the United States and Russia and Great Britain respectively.

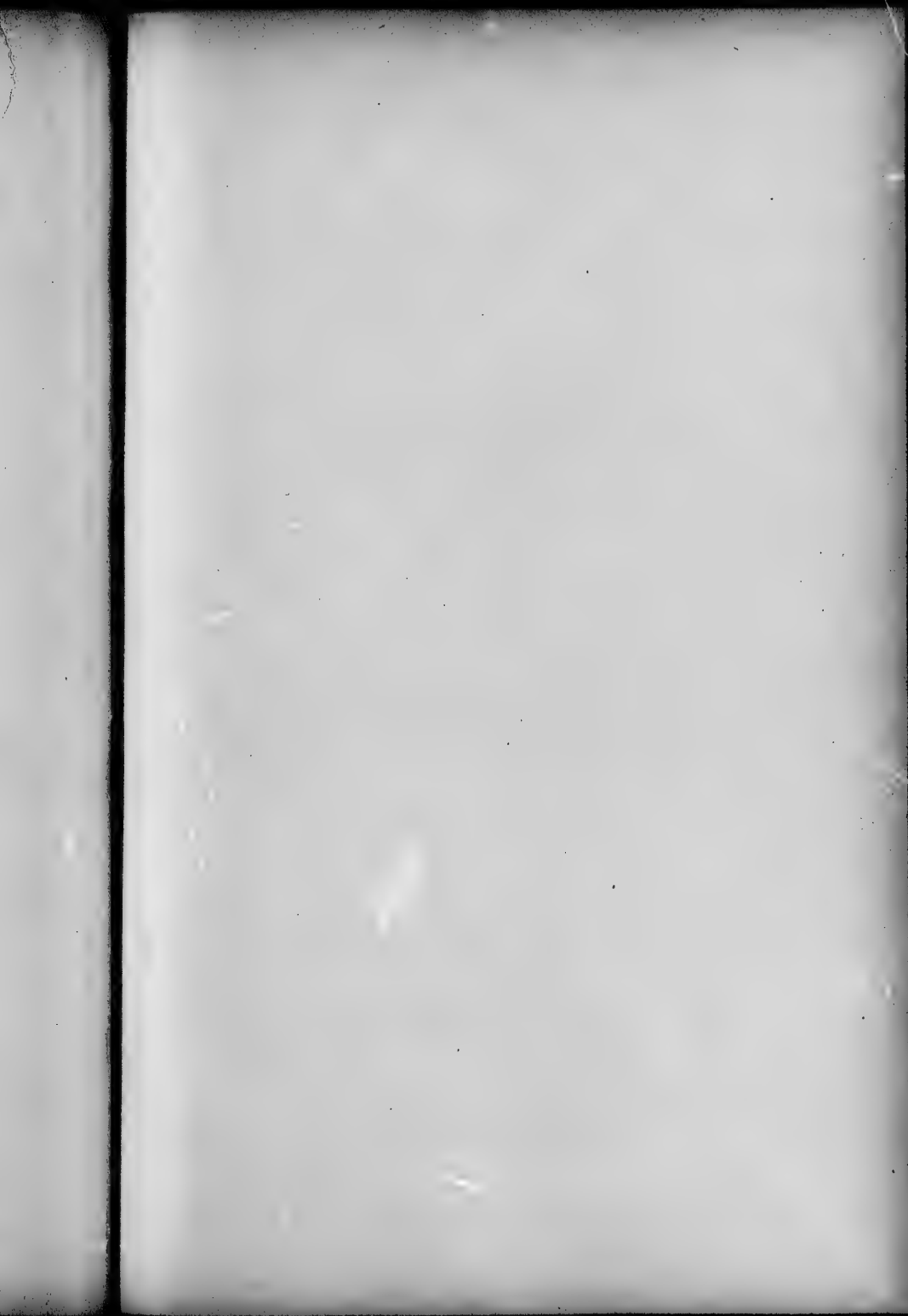
It has been seen that the whole controversy, which was ended by the Treaty, arose out of the Ukase of 1821.

That document claimed not only the territorial right of sovereignty from Behring Straits to 51° north latitude, but the right to exclude foreign vessels from approaching the coasts and islands within 100 Italian miles.

In absence of a specified exception, the withdrawal should be held commensurate with the pretension.

It was protested against *in toto*, on the ground that the coast was almost entirely unoccupied, and that maritime jurisdiction, even where it was occupied, should not extend beyond 3 miles.

The coast of Behring Sea was, moreover, less occupied than the coast outside. Moreover, the chief trading ports of the Russian Company were situated on the coast to the south of



Behring Sea, and it can be shown that the main purpose of the Ukase was the safeguarding of these.

I.

Extracts from Correspondence.

The subjoined extracts from the correspondence leading up to the Conventions of 1824 and 1825, with other allusions from contemporary documents, show clearly that the phrase *Pacific Ocean* was intended to include what is now known as Behring Sea; and that the term *north-west coast* was used for the entire coast as far up as Behring Strait.

Mr. Adams, in 1823, dealt with the Russian claim as one of exclusive territorial right on the north-west coast of America, extending, he said, from the "northern extremity of the continent." Articles in the "North American Review" (vol. xv, Article 18), and "Quarterly Review" (1821-22, vol. xxvi, p. 344), published at the time of the negotiations of 1824-25, so treat the words "north-west coast."

Mr. Adams to
Mr. Rush, July 23,
1823.

Mr. Adams, in his despatch of the 22nd July, 1823, referred to Emperor Paul's Ukase as pretending to grant to the American Company the "exclusive possession of the north-west coast of America, which belonged to Russia, from the 55th degree of north latitude to Behring Strait."

American State
Papers, Foreign
Relations, vol. v,
p. 436.

The Ukase was headed "Rules established for the Limits of Navigation and Order of Communication along the coast of the Eastern Siberia, the *north-west coast of America*, and the Aleutian, Kurile, and other Islands." It obviously included the coast of Behring Sea in the term "north-west coast."

Baron Nicolay to Lord Londonderry, 31st October (12th November), 1821, says:—

"Le nouveau Règlement n'interdit point aux bâtiments étrangers la navigation dans les mers qui baignent les possessions Russes sur les côtes nord-ouest de l'Amérique et nord-ouest de l'Asie."

"Car, d'un autre côté, en considérant les possessions Russes qui s'étendent, tant sur la côte nord-ouest de l'Amérique, depuis le Détroit de Behring jusqu'au 51° de latitude septentrionale, que sur la côte opposée de l'Asie et les îles adjacentes, depuis le même détroit jusqu'au 45°," &c.

"Car, s'il est démontré que le Gouvernement Impérial eût eu à la rigueur la faculté de fermer entièrement aux étrangers cette partie de l'*Océan Pacifique* qui bordent nos possessions en Amérique et en Asie, à plus forte raison le droit en vertu auquel il vient d'adopter une mesure beaucoup moins généralement restrictive doit ne pas être révoqué en doute."

"Les officiers commandant les bâtiments de guerre Russes qui sont destinés à veiller dans l'Océan Pacifique au maintien des dispositions susmentionnées, ont reçu l'ordre de commencer à les mettre en vigueur envers ceux des navires étrangers," &c.

In this note "north-west coast of America" is mentioned three times, and in each case the coast of Behring Sea is included in the term. Pacific Ocean appears twice, and in both includes the Behring Sea.

Again, M. de Poletica, writing to Mr. Adams on the 28th February, 1822:—

"The first discoveries of the Russians on the north-west continent of America go back to the time of the Emperor Peter I. They belong to the attempt, made towards the end of the reign of this great Monarch, to find a passage from the icy sea into the *Pacific Ocean*."

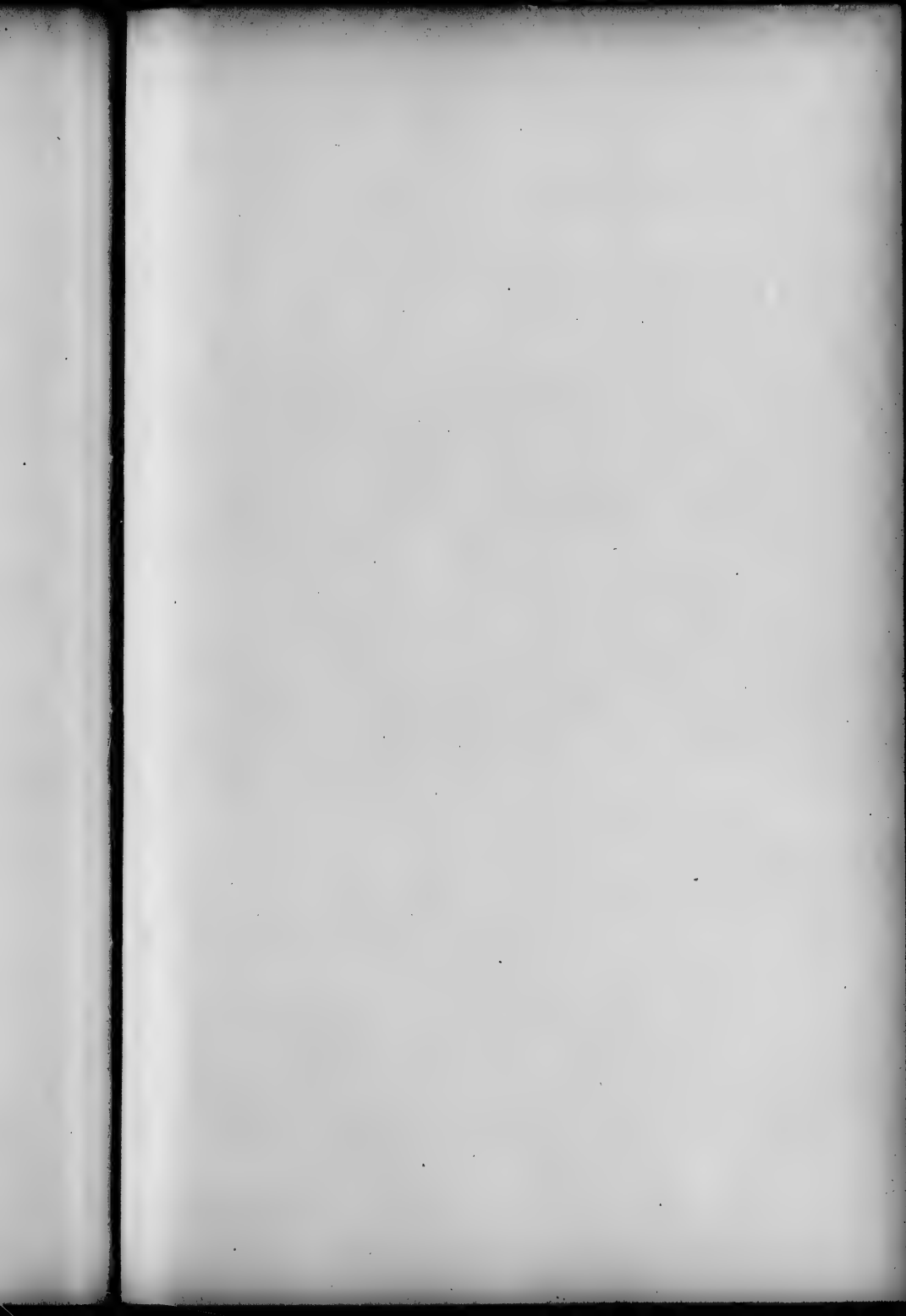
"When, in 1799, the Emperor Paul I granted to the present American Company its first Charter, he gave it the exclusive possession of the north-west coast of America, which belonged to Russia, from the 55th degree of north latitude to Behring Straits."

"From this faithful exposition of known facts, it is easy, Sir, as appears to me, to draw the conclusion that the rights of Russia, to the extent of the north-west coast, specified in the Regulation of the Russian-American Company, rest," &c.

"The Imperial Government, in assigning for limits to the Russian possessions on the north-west coast of America, on the one side Behring Straits, and on the other the 51st degree of north latitude, has," &c.

"I ought, in the last place, to request you to consider, Sir, that the Russian possessions in the Pacific Ocean extend on the north-west coast of America from Behring Straits to the 51st degree of north latitude, and on the opposite side of Asia and the islands adjacent from the same strait to the 45th degree."

Throughout this note the phrase "north-west coast" includes the coast of Behring Sea, and the last passage shows unmistakably that the



Russians at that time regarded the Pacific Ocean as extending to Behring Straits.

That Russia regarded Behring Sea as included in the phrase "Pacific Ocean" is further conclusively shown by the citation from Tikhmanieff's "History" as to the proceedings with regard to American whalers in 1842 and in 1853.

The fact that the whole territorial and maritime claim of the Ukase was in question, and was settled by the Treaties of 1824 and 1825, also appears from the Memorial laid by Mr. Middleton before the Russian Government on the 17th December, 1823:—

"With all the respect which we owe to the declared intention, and to the determination indicated by the Ukase, it is necessary to examine the two points of fact: (1) *If the country to the south and east of Behring Strait, as far as the 51st degree of north latitude, is found strictly occupied.* (2) *If there has been latterly a real occupation of this vast territory.* The conclusion which must necessarily result from these facts does not appear to establish that the territory in question has been legitimately incorporated with the Russian Empire. The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled."

American State
Papers, vol. v,
p. 452.

In an earlier part of the same paper Mr. Middleton observes:—

"The Ukase even goes to the shutting up of a strait which has never been till now shut up, and which is at present the principal object of discoveries interesting and useful to the sciences. The very terms of the Ukase bear that this pretension has now been made for the first time."

The same appears from Mr. G. Canning's despatch to Sir C. Bagot of the 24th July, 1824:—

"Your Excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question: the first, the assumption of the base of the mountains, instead of the summit, as the line of boundary; the second, the extension of the right of navigation of the Pacific to the sea beyond Behring Straits."

See Russian Ukase
Correspondence,
No. 51.

"As to the second point, it is, perhaps, as Count Lieven remarks, new. But it is to be remarked, in return, that the circumstances under which this additional security is required will be new also. By the territorial demarcation agreed to in this 'Projet,' Russia will become possessed

in acknowledged sovereignty of both sides of Behring Straits.

"The Power which could think of making the Pacific a *mare clausum* may not unnaturally be supposed capable of a disposition to apply the same character to a strait comprehended between two shores of which it becomes the undisputed owner. *But the shutting up of Behring Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England.*

"Nor could we submit to be excluded, either positively or constructively, from a sea in which the skill and science of our seamen has been and is still employed in enterprises interesting, not to this country alone, but to the whole civilized world.

"The protection* given by the Convention to the American coasts of each Power may (if it is thought necessary) be extended in terms to the coasts of the Russian Asiatic territory; but in some way or other, if not in the form now presented, the free navigation of Behring Straits, and of the seas beyond them, must be secured to us."

It would have been of little use securing the right to navigate through Behring Straits unless the right to navigate the sea leading to it was secured, which would not have been the case if the Ukase had remained in full force over Behring Sea.

The frequent references to Behring Straits and the seas beyond them show that there was no doubt in the minds of the British statesmen that, in securing an acknowledgment of freedom of navigation and fishing throughout the Pacific, they had secured it right up to Behring Straits.

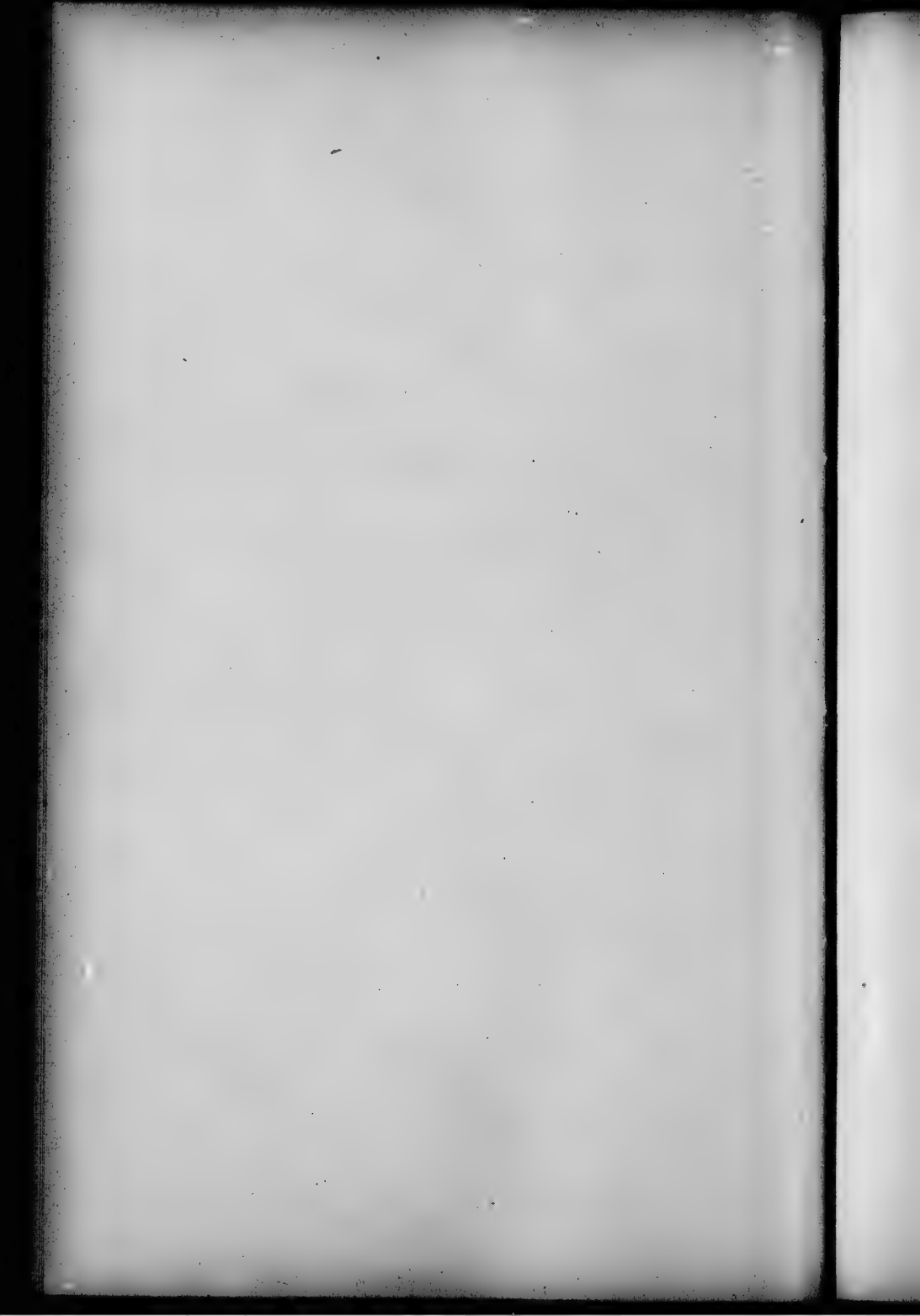
Continued usage of the phrase "Pacific Ocean" as including Behring Sea to the present time.

That the Russian Government understood the phrase "Pacific Ocean" in the Treaty to include Behring Sea is shown by the reply of that Government to Governor Etholin in 1842, when he wished to keep American whalers out of Behring Sea:—

"Tikhmenieff."

"The claim to a *mare clausum*, if we wished to advance such a claim in respect to the northern part of the Pacific Ocean, could not be theoretically justified. Under Article I of the Convention of 1824, between Russia and the United

* (i.e.) By the extension of territorial jurisdiction to 2 leagues, as originally proposed in the course of the negotiations between Great Britain and Russia.





States, which is still in force, American citizens have a right to fish in all parts of the Pacific Ocean. But under Article IV of the same Convention, the ten years period mentioned in that Article having expired, we have power to forbid American vessels to visit inland seas, gulfs, harbours, and bays for the purposes of fishing and trading with the natives. That is the limit of our rights, and we have no power to prevent American ships from taking whales in the open sea."

See also reply of the Russian Government to Governor-General of Eastern Siberia, 1846:—

"We have no right to exclude foreign ships from that part of the great ocean which separates the eastern shore of Siberia from the north-western shore of America," &c.;

and the instructions which were finally issued to the Russian cruisers on the 9th December, 1853.

That the Government of the United States accepted an identical meaning of the phrase "Pacific Ocean," and of the extent of the abandonment of claims made by Russia, as embodied in the Convention of 1824, is perhaps most clearly shown by the subjoined extracts from the works of Robert Greenhow, Translator and Librarian to the United States' Department of State.

Greenhow's works (well known in connection with the discussion of the "Oregon question") afford a detailed and conclusive means of ascertaining the views officially held by the United States' Government on the meaning of *Pacific Ocean*, *Behring Sea*, *north-west coast*, and the extent of abandonment of claims made by Russia in Ukase of 1821, by the Convention of 1824.

A "Memoir" was prepared on the official request of L. F. Linn, Chairman of Select Committee on the Territory of Oregon, by order of John Forsyth, Secretary of State. It includes a Map entitled "The North-west Coast of North America and adjacent Territories," which extends from below Acapulco in Mexico to above the Kuskokwim River mouth in Behring Sea, and embraces also the greater part of the Aleutian chain.

Greenhow's "History" was officially presented to the Government of Great Britain by the Government of the United States in July 1845, in connection with the Oregon discussion and in pursuance of an Act of Congress, p. 141,

Robert Greenhow,
Translator and
Librarian to the
United States'
Department of
State.

"Memoir Historical and Political of the North-west Coast of North America and the adjacent Territories, illustrated by a Map and a geographical view of these countries, by Robert Greenhow, Translator and Librarian to the Department of State." Senate, 26th Cong., 1st Session (174), 1840.

The same Memoir, separately printed, apparently in identical form, and with the same Map and pagination, Wiley and Putnam, New York, 1840.

"The Geography of Oregon and California and the other Territories on the North-west Coast of North America." New York, 1845.

"The History of Oregon and California and the other Territories on the North-west Coast of North America, by Robert Greenhow, Translator and Librarian to the Department of State of the United States; author of a Memoir Historical and Political on the north-west coast of North America, published in 1840 by direction of the Senate of the United States." New York, 1845.

This is a second edition, and in the preface it is explained that its issue was rendered necessary to supply 1,500 copies of the work which had been ordered for the General Govern-

ment.
The same work. First edition, London, 1844.

Both editions contain Maps, which appear to be identical, but different from the Maps accompanying the "Memoir," though including nearly the same limits with them.

The following is the correspondence accompanying this presentation :—

" *Mr. Buchanan to Mr. Pakenham.*

" *Department of State, Washington,*

" Sir,

" July 12, 1845.

" In pursuance of an Act of Congress approved on the 20th February, 1845, I have the honour to transmit to you herewith, for presentation to the Government of Great Britain, one copy of the 'History of Oregon, California, and the other territories on the North-west Coast of America,' by Robert Greenhow, Esq., Translator and Librarian of the Department of State.

" I avail, &c.

(Signed) " JAMES BUCHANAN."

" *Mr. Pakenham to the Earl of Aberdeen.*—(Received

" August 16.)

" My Lord,

" *Washington, July 29, 1845.*

" I have the honour herewith to transmit a copy of a note which I have received from the Secretary of State of the United States, accompanied by a copy of Mr. Greenhow's work on Oregon and California, which, in pursuance of an Act of Congress, is presented to Her Majesty's Government.

" Although Mr. Greenhow's book is already in your Lordship's possession, I think it right, in consequence of the official character with which it is presented, to forward to your Lordship the inclosed volume, being the identical one which has been sent to me by Mr. Buchanan.

" I have not failed to acknowledge the receipt of Mr. Buchanan's note in suitable terms.

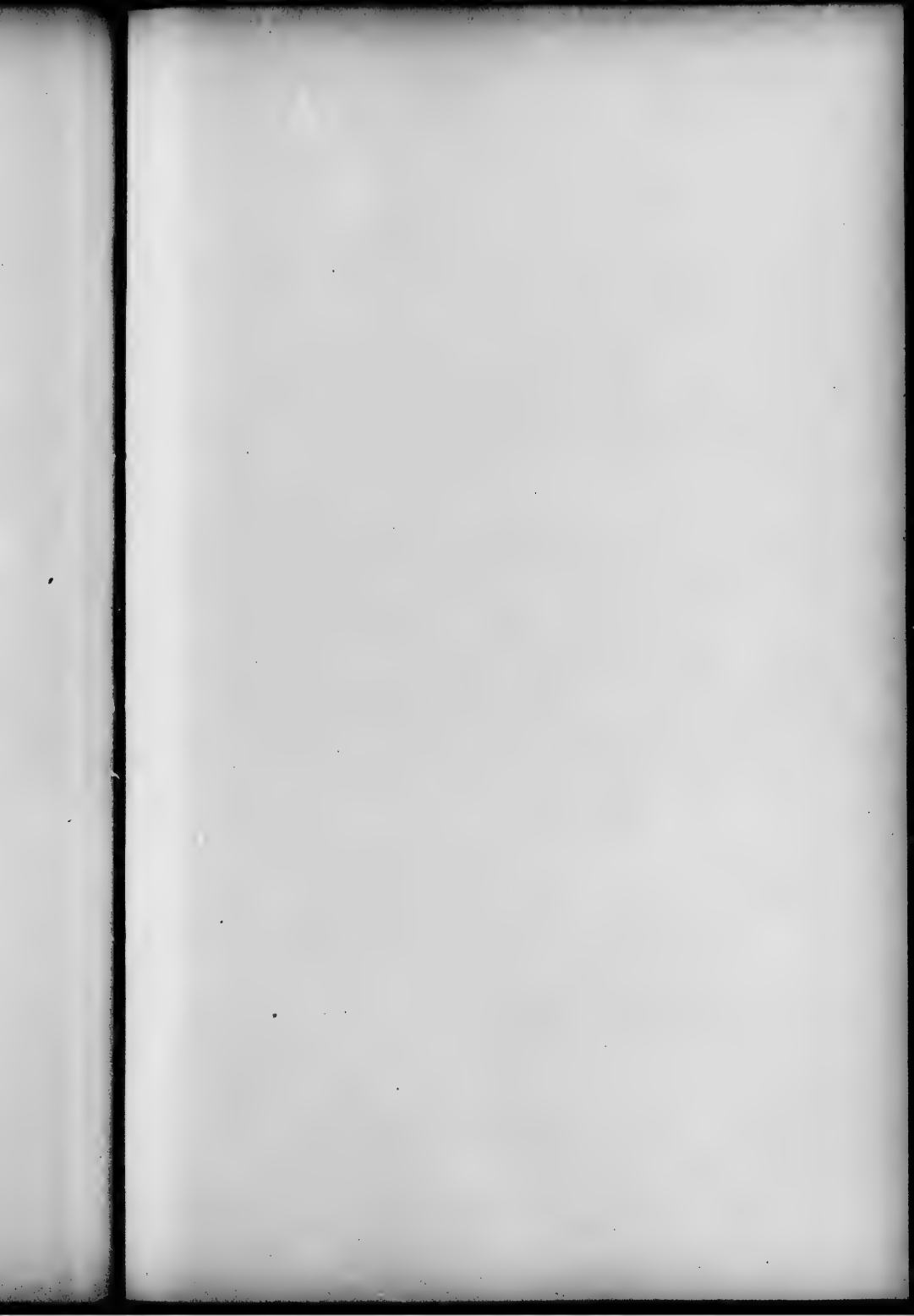
" I have, &c.

(Signed) " R. PAKENHAM."

Touching the meaning of the terms *North-west Coast* and *Pacific Ocean*, and the meaning attached to the relinquishment of Russian claims by the Convention of 1824, in the first part of the "Memoir," under the heading "Geography of the Western Section of North America," the following passage occurs :—

"The *north-west coast** is the expression usually employed in the United States at the present time to distinguish the vast portion of the American continent which extends north of the 40th parallel of latitude from the Pacific to the great dividing ridge of the *Rocky Mountains*, together with the contiguous islands in that ocean. The southern part of this territory, which is drained almost entirely by the River Columbia, is commonly

* N.B.—The *italics* in this and subsequent quotations are those employed by the author himself.



called *Oregon*, from the supposition (no doubt erroneous) that such was the name applied to its principal stream by the aborigines. For the more northern parts of the continent many appellations, which will hereafter be mentioned, have been assigned by navigators and fur-traders of various nations. The territory bordering upon the Pacific southward, from the 40th parallel to the extremity of the peninsula which stretches in that direction as far as the Tropic of Cancer, is called *California*, a name of uncertain derivation, formerly applied by the Spaniards to the whole western section of North America, as that of *Florida* was employed by them to designate the regions bordering upon the Atlantic. The north-west coast and the west coast of California together form the *west coast of North America*; as it has been found impossible to separate the history of these two portions, so it will be necessary to include them both in this geographical view" (pp. 3-4).

The relations of Behring Sea to the Pacific Ocean are defined as follows in the "Memoir":—

"The part of the Pacific north of the Aleutian Islands which bathes those shores is commonly distinguished as the *Sea of Kamitchatka*, and sometimes as *Behring Sea*, in honour of the Russian navigator of that name who first explored it" (pp. 4-5).

Again, in the "Geography of Oregon and California," as follows:—

"Cape Prince of Wales, the westernmost point of America, is the eastern pillar of Behring Strait, a passage only 50 miles in width, separating that continent from Asia, and forming the only direct communication between the Pacific and Arctic Oceans.

"The part of the Pacific called the *Sea of Kamitchatka*, or Behring's Sea, north of the Aleutian chain, likewise contains several islands," &c. (p. 4).

* Explanatory note by the author:—

"In the following pages the term *coast* will be used, sometimes as signifying only the sea-shore, and sometimes as embracing the whole territory, extending therefrom to the source of the river; care has been, however, taken to prevent misapprehension, where the context does not sufficiently indicate the true sense. In order to avoid repetitions, the *north-west coast* will be understood to be the *north-west coast of North America*; all latitudes will be taken as *north latitudes*, and all longitudes as *west from Greenwich*, unless otherwise expressed."

"The northern extremity of the west coast of America is *Cape Prince of Wales*, in latitude 68° 52', which is also the westernmost spot in the whole continent; it is situated on the eastern side of *Behring's Strait*, a channel 51 miles in width, connecting the Pacific with the Arctic (or *North Frozen*) Ocean, on the western side of which strait, opposite *Cape Prince of Wales*, is *East Cape*, the eastern extremity of Asia. Beyond Behring's Strait the shores of the two continents recede from each other. The north coast of America has been traced from *Cape Prince of Wales* north-eastward to *Cape Barrow*," &c. (pp. 3-4).

In the "History of Oregon and California," the Sea of Kamtchatka, or Behring Sea, is again referred to as a part of the Pacific Ocean.

In respect of the understanding by the United States of the entire relinquishment of the claims advanced by the Ukase of 1821 in the Russian and United States' Convention of 1824, the following is found on a later page of the volume last referred to:—

"This Convention does not appear to offer any grounds for dispute as to the construction of its stipulations, but is, on the contrary, clear, and equally favourable to both nations. The rights of both parties to navigate every part of the Pacific, and to trade with the natives of any places on the coasts of that sea not already occupied, are first acknowledged," &c. (p. 342).

It is thus clear, as the result of the laborious investigations undertaken by Greenhow on behalf of the United States' Government, and fully accepted by that Government as official:—

1. That Behring Sea was a part of the Pacific.
2. That the north-west coast was understood to extend to Behring Strait.
3. That Russia relinquished her asserted claims over "every part of the North Pacific."

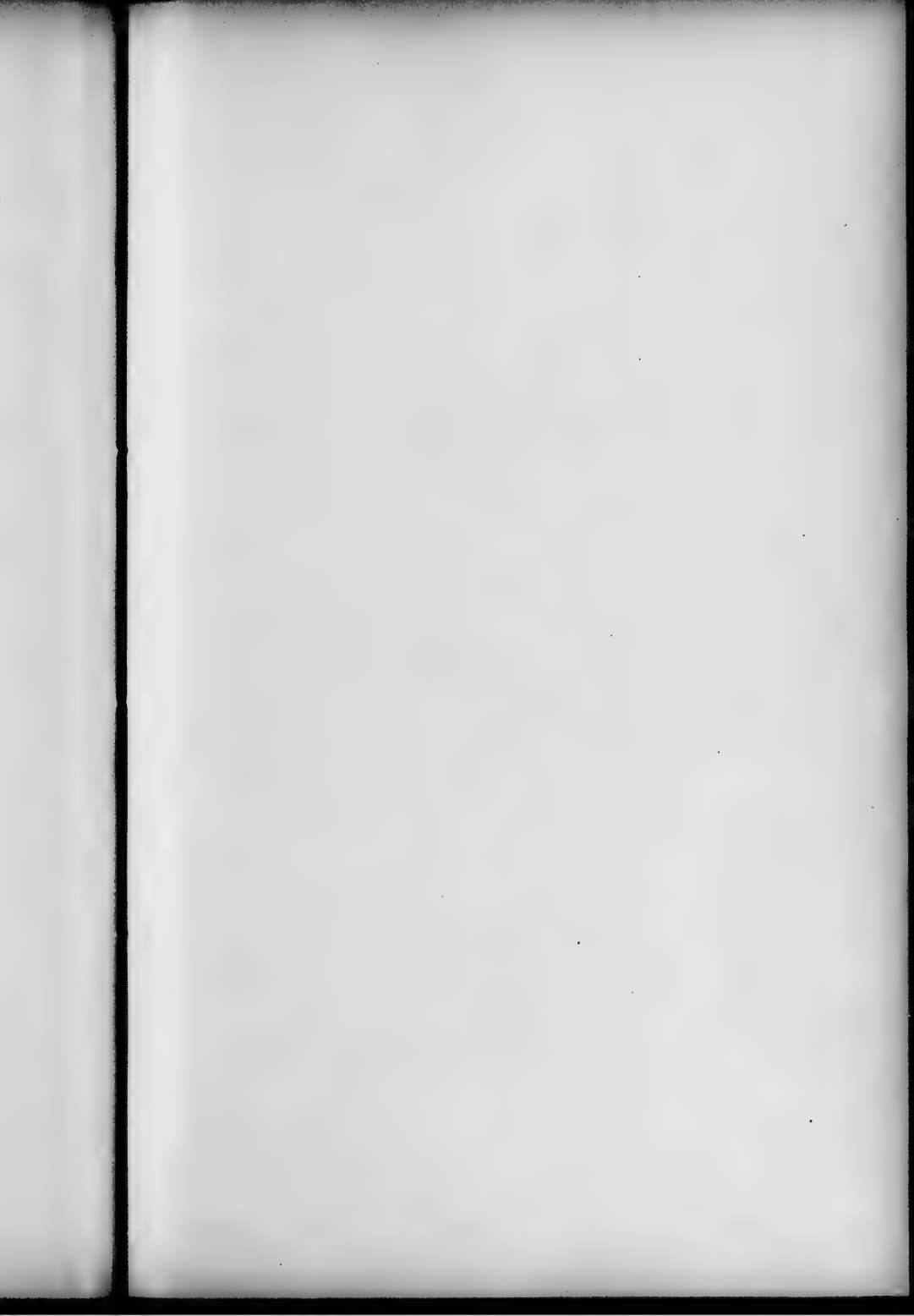
The following are further instances, from among very many which might be quoted, showing that in official documents of the Governments specially interested, the phrase "Pacific Ocean" has continued to be employed as inclusive of Behring Sea:—

Pilot Charts, by Lieutenant Mauray, issued by the United States' Hydrographic Office in 1850. Sheets 2 and 3, Series (A). The name North Pacific includes Behring Sea.

In an "Hydrographic Atlas of the Russian Possessions in the Pacific," by Captain Tebenkow, St. Petersburg, published in 1852, he includes the water of Behring Sea, though he does not distinguish the waters of this sea from those of the Pacific.

The Legislature of the Territory of Washington, in 1806, referred to "fishing banks known to navigators to exist along the Pacific coast from the Cortes bank to Behring Strait."

Mr. H. W. Elliott, who was engaged as Special Treasury Agent in the study of the seal islands of Alaska for the United States' Government, as late as the year 1880, in his official Report on



the seal islands of Alaska, remarked, concerning the seals :—

"Their range in the *North Pacific* is virtually confined to four islands in Behring Sea, viz., St. Paul and St. George, of the true Pribyloff group, and Behring and Copper, of the Commander Islands."

(The *italics* are not in the original.)

Again, he says :—

"In the North Atlantic no suitable territory for their reception exists, or ever did exist; and really nothing in the North Pacific beyond what we have designated in Behring Sea."

He also describes the rookeries in Behring Sea as "North Pacific rookeries."

And also :—

"Geographically, as well as in regard to natural history, Behring Island is one of the most curious islands in the northern part of the *Pacific Ocean*."

(The *italics* are not in the original.)

Writing to Mr. Hoffman in 1882 the 8th (20th) May, M. de Giers said :—

"Referring to the exchange of communications which has taken place between us on the subject of a Notice published by our Consul at Yokohama relating to fishing, hunting, and to trade in the *Russian waters of the Pacific*, and in reply to the note which you addressed to me, dated the 15th (27th) March, I am now in a position to give you the following information :—

United States' Papers relating to Behring Sea Fisheries, 1887, pp. 110, 111.

"A Notice of the tenour of that annexed to your note of the 15th March was, in fact, published by our Consul at Yokohama, and our Consul-General at San Francisco is also authorized to publish it.

"This measure refers only to prohibited industries and to the trade in contraband; the restrictions which it established extend strictly to the territorial waters of Russia only. It was required by the numerous abuses proved in late years, and which fell with all their weight on the population of our sea-shore and of our islands, whose means of support is by fishing and hunting. These abuses inflicted also a marked injury on the interests of the Company to which the Imperial Government had conceded the monopoly of fishing and hunting (exportation), in islands called the 'Commodore' and the 'Seals'.

"Beyond this new Regulation, of which the essential point is the obligation imposed upon captains of vessels who desire to fish and to hunt in the *Russian waters of the Pacific* to provide themselves at Vladivostok with the permission or licence of the Governor-General of Oriental Siberia, the right of fishing, hunting, and of trade by foreigners in our territorial waters is regulated by

Article 560, and those following, of vol. xii, Part II, of the Code of Laws.

"Informing you of the preceding, I have, &c."

In 1882 a portion of the Behring Sea is referred to by the Russian Government as "Russian waters of the Pacific" and as "our Pacific waters." Witness the following :—

"Notice by A. K. Felikan, His Royal and Imperial Majesty's Consul, Yokohama, 15th November, 1881.

"(Extract.)

Papers relating
to Behring Sea
Fisheries, Washing-
ton, 1887, p. 106.

"At the request of the local authorities of Behring and other islands, the Undersigned hereby notifies that the Russian Imperial Government publishes for general knowledge the following :—

"1st. Without a special permit or licence from the Governor-General of Eastern Siberia, foreign vessels are not allowed to carry on trading, hunting, fishing, &c., on the Russian coasts or islands in the Okhotak and Behring Sea, or on the north-eastern coast of Asia, or within their sea boundary-line."

In the correspondence between the United States and Russia, touching the meaning of this Regulation, it will be seen the Notice is alluded to as "relative to fishing, hunting, and trade in the Russian waters of the Pacific," and as relative to fishing and hunting in "our Pacific waters."

Ibid., p. 118.

So, in 1887, it is found that the American Representative at St. Petersburg informed Mr. Bayard (17th February, 1887) that the Notice already quoted prohibits fishing, &c., in "the Russian Pacific coasts." This correspondence related to a seizure which had been made in Behring Straits.

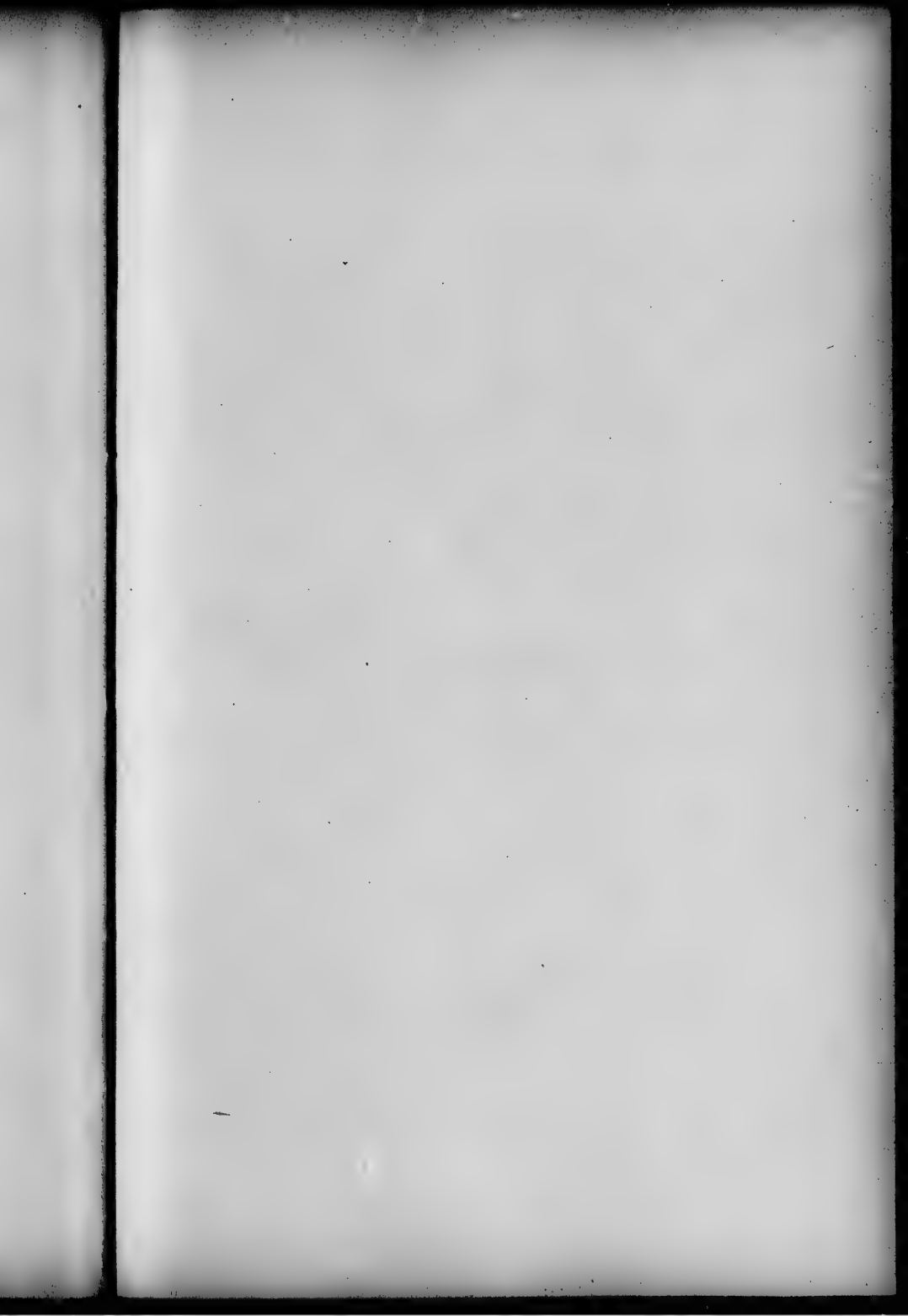
In Clark's treatise on the whale fishery, forming part of "The Fishery Industries of the United States," Senate Misc. Doc. 124, 47th Congress, 1st Session, 1887, the following, among other references, are found.

Under the heading, "Relative Importance of various Grounds," we find :—

"Of the whale oil taken during the same period [1870 to 1880] 58 per cent. was by the North Pacific fleet from the region north of the 50th parallel, including the Arctic, Okhotak, and Behring Sea" (p. 8).

Under the heading, "North Pacific Grounds":—

"Right whales are found, and have been captured, around the Fox Islands, and in Bristol Bay, north of the



Alaska Peninsula. In Behring Sea, along the coast of Kamtchatka, there is good right whaling" (p. 17).

Chapter 6 is headed, "The Development of the North Pacific and Arctic Whale Fishery," with, as a subordinate title, "The North Pacific and Pacific-Arctic Fishery" (p. 78).

Again, on various recent Charts issued by the United States' Hydrographic Office, the usage of Pacific or North Pacific Ocean as including Behring Sea occurs, including the latest and most perfect editions now in actual use.

Thus:—

No. 909. Published March 1888 at the Hydrographic Office, Washington, D. C.:—

"Pacific Ocean. Behring Sea, Plover Bay, from a survey by Lieutenant Maximov, Imperial Russian Navy, 1876."

(Plover Bay is situated on the Asiatic coast, near the entrance to Behring Strait.)

No. 910. Published October 1882 at the Hydrographic Office, Washington, D. C.:—

"North Pacific Ocean. Anadir Bay, Behring Sea. From a Chart by Engineer Bulkley, of New York, in 1865," &c.

(Anadir Bay is situated between latitudes 64° and 65° on the Asiatic side of Behring Sea.)

Similar evidence is afforded by the title-page of the work issued by the same Hydrographic Office in 1869, as follows:—

"Directory of Behring Sea and the coast of Alaska. . . . Arranged from the Directory of the Pacific Ocean."

The British Admiralty Chart of Behring Sea, corrected up to November 1889, but originally compiled in 1884 (No. 2460), is likewise entitled as follows:—

"North-west Pacific. Kamtchatka to Kadiak Island, including Behring Sea and Strait."

Historical Note on the circumstances under which Behring Sea has come to be so named.

Without entering into any great detail respecting the numerous voyages of discovery in this region, which in the first instances were principally due to Russian efforts from the Asiatic coast, it is comparatively easy to place on record the salient features of this branch of the subject; and to trace its progress, more particularly by means of the Maps published

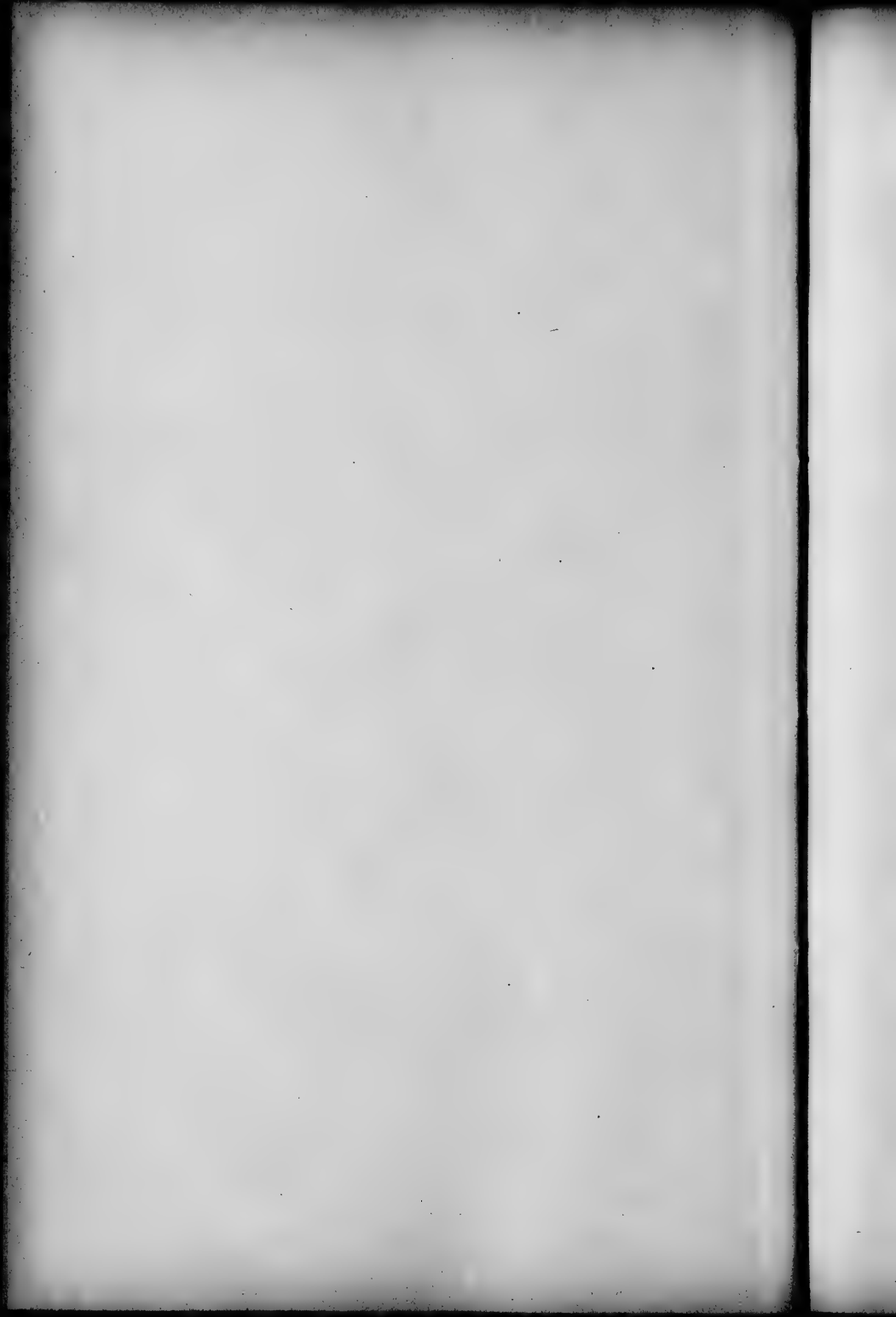
from time to time in illustration of the results of the various explorers.

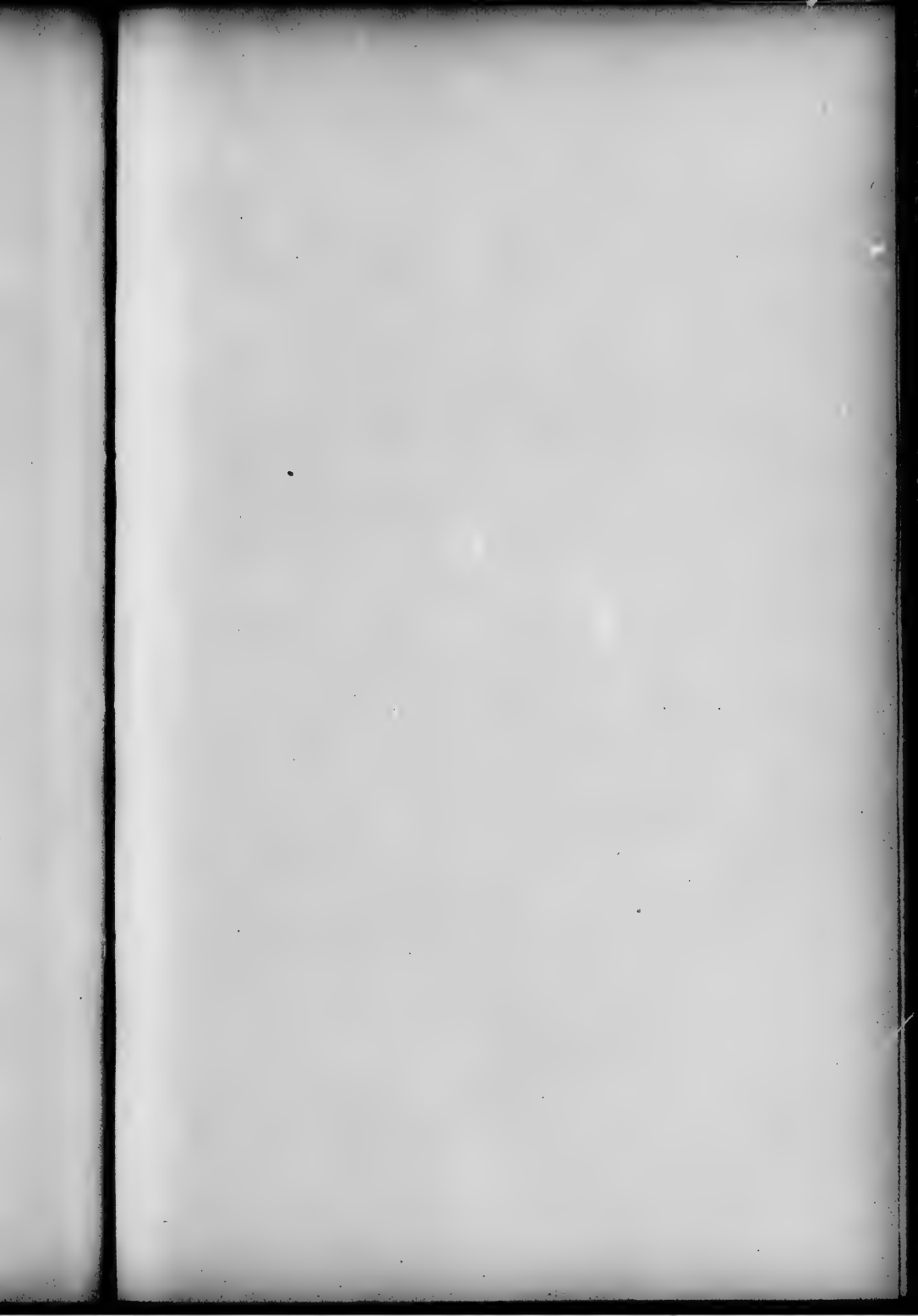
The first published Map in which that part of the Asiatic coast, including Kamtchatka, and extending to and beyond Behring Straits, was represented, was that in illustration of Behring's first voyage, in 1737, in D'Anville's Atlas. It is reproduced by Mr. W. H. Dall, in the "National Geographic Magazine," Washington, 1890. At this time, neither the Commander Islands nor the Aleutian Islands were known, but the ocean to the east of the Asiatic coast is named *Partie de la Mer Dormante*, the name, as engraved on the Map, extending from a point to the west of the extremity of the Peninsula of Kamtchatka, in a north-easterly direction to about the position which St. Matthew Island is now known to occupy, or to the centre of Behring Sea.

After Behring's second expedition, in which the Commander himself miserably perished, but in the course of which the American coast was reached, and the Commander and Aleutian Islands in part discovered, we find a Map published by Müller, the historian and geographer of the expedition. This is entitled, in the English translation of Müller's work, published in London in 1761, "A Map of the Discoveries made by the Russians on the North-west Coast of America," published by the Royal Academy of Sciences at St. Petersburg, and republished in London by Thomas Jefferys.

In this Map, the islands now known as the Aleutian Islands and the Commander Islands are indicated very inaccurately, and the greater part of what is now known as Behring Sea is occupied by a great conjectural promontory of the American continent, leaving a comparatively narrow and sinuous body of water or strait running in a direction proximately parallel to the Asiatic coast, and separating the two continents. The southern portion of this is named on the Map *Sea of Kamtchatka*, the northern, *Sea of Anadir*, in equivalent characters. Behring Strait, as now known, appears without name, while the wider ocean to the south is named *Great South Sea or Pacific Ocean*.

A reproduction on a smaller scale of the same Map appears in the "London Magazine" for 1764. This is entitled, "A new Map of the North-east Coast of Asia and North-west Coast





of America, with the late Russian Discoveries." It repeats the nomenclature and all the errors of the original Map, but employs the term *Great South Sea* only, the addition "or Pacific Ocean" being omitted.

After the date of the publication of Cook's third voyage, in 1784, what is now known as Behring Sea began to appear on Maps in something like its true form and proportions, and in the Map accompanying the official record of his voyages, of the date mentioned, we find that sea without special distinctive name, and simply regarded as a part of the Pacific Ocean; though the names *Olutorski Sea*, *Beaver Sea*, and *Gulf of Anadir* are engraved in parts of it close to the Siberian shores, and *Shoal Water* and *Bristol Bay* appear as local names of equivalent rank on the opposite American coast.

From this date onward the usage became very varied. Many Maps continued to appear, till 1840 or later, upon which no name of a distinctive kind was given to Behring Sea, while upon others it became customary to extend the originally local name *Sea of Kamtchatka* to the whole of this body of water. Doubtless because of the ambiguity attaching to this particular name, from its originally strictly local use, at later dates it began to be customary to employ Behring's name for the sea now so called; till at the present time that name may be said to have entirely superseded the older one, and to have passed into common use.

Following on this change, the name *Sea of Kamtchatka* was changed to *Gulf of Kamtchatka*, and relegated to its original place on the shore of the peninsula of the same name; while the names *Olutorski* and *Anadir* likewise became confined to the respective gulfs on the Siberian coast. For the most modern usage in this respect, see United States' Hydrographic Office Chart No. 68, 1890, and British Admiralty Chart No. 2460, 1889.

It is very noteworthy, however, in studying any series of Maps chronologically arranged, that up to the middle of the present century Behring Sea is frequently without any general name, while the adjoining Sea of Okhotsk is in almost every instance clearly designated.

Had the circumstances with respect to the nomenclature of Behring Sea been different, and had that body of water been consistently sup-

plied with a distinctive name on all Maps, it would, however, by no means necessarily follow that this was intended to show that it was not a part of the Pacific Ocean. An ocean may, and in all cases actually does, include numerous seas and gulfs as subordinate divisions. The mere fact that the name of the North Pacific Ocean, or equivalent name in use at different periods, is not usually engraved partly upon the area of Behring Sea in the Maps, affords no valid argument for such separation. The name of this ocean is generally found to be engraved, in large characters, upon its widest and most open part somewhere to the south of the 50th parallel, and between that parallel and the Equator. This usage follows as a result of the actual form of the ocean, and the necessity of giving due prominence to its name.

*Maps specially referred to by Mr. Blaine in his
Letter of December 17, 1890.*

Early Maps referred
to by United States
in despatch,
December 17, 1890.

The United States' Government has in this controversy attached importance to the very early employment of some distinctive name for Behring Sea, and reference has been made to several of the older Maps.

It is, however, submitted that even in restricting the argument to Maps, the important question is that relating to the Maps and Charts of the years immediately antecedent to 1824 and 1825, in which the Conventions dealing with the Ukase of 1821 were concluded.

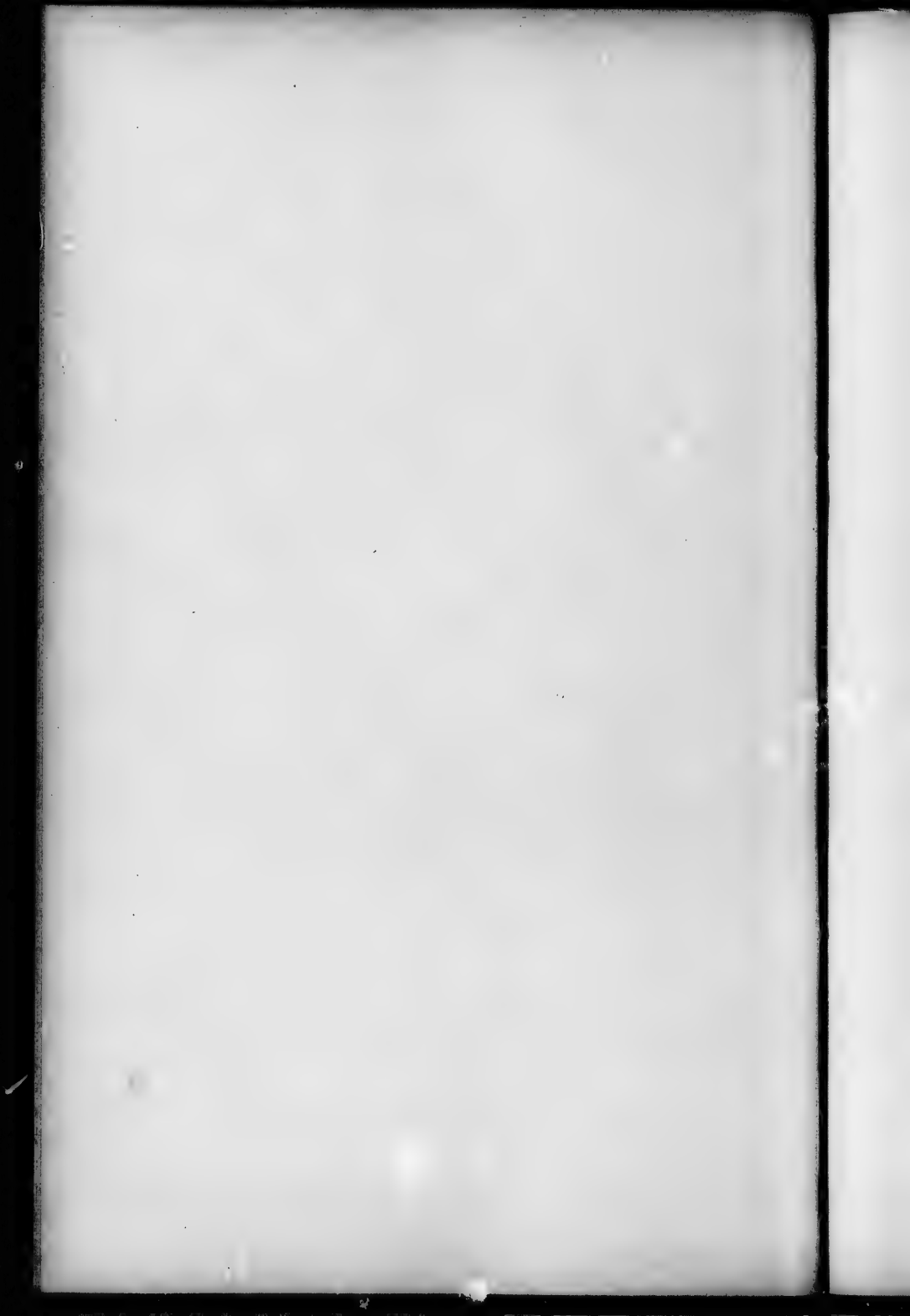
To such Maps the negotiators doubtless referred.

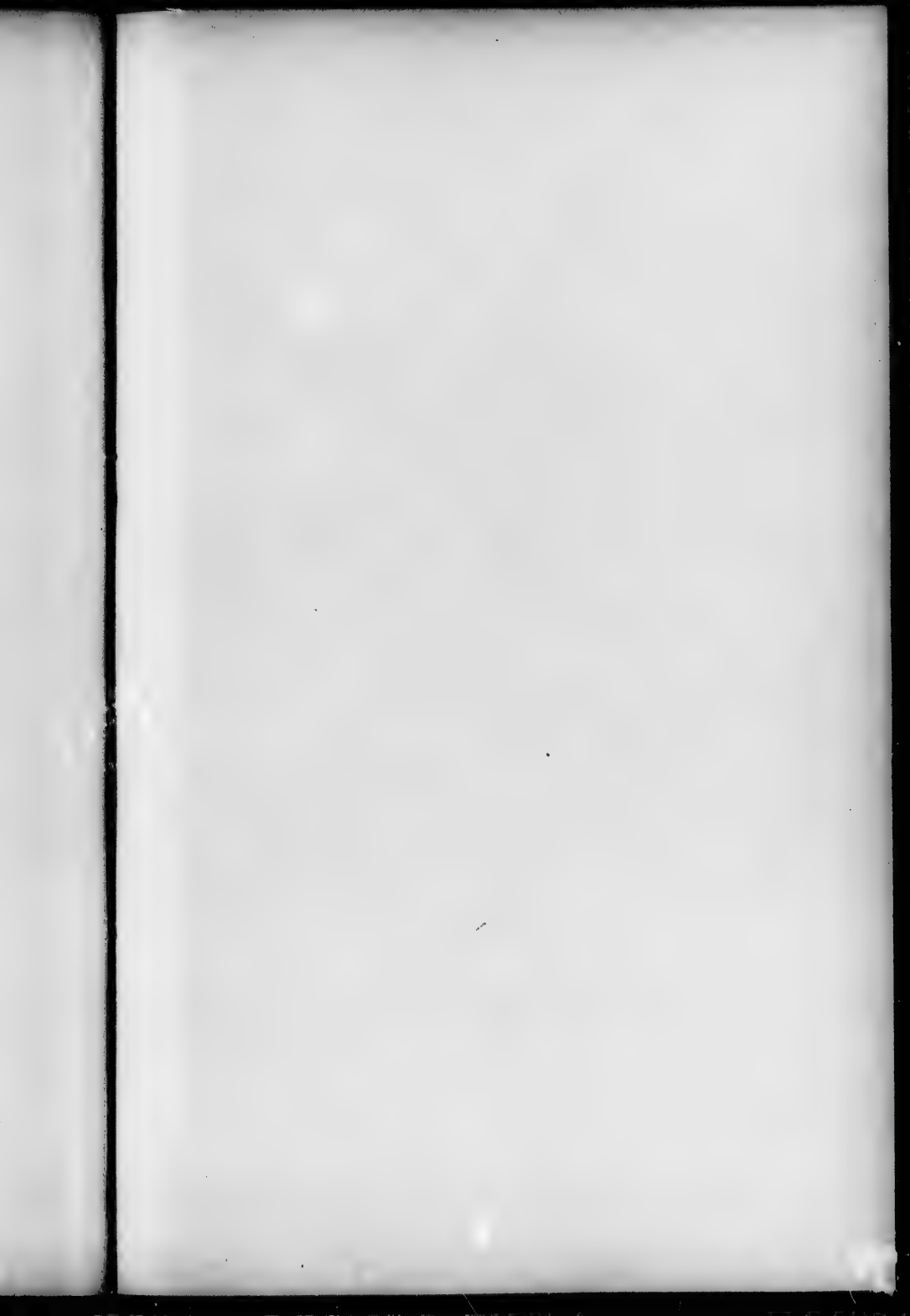
Reverting, however, to the earlier Maps specially instanced by the United States' Government, it will be found that even these do not bear out the assertions based by Mr. Blaine upon them.

A Map showing Cook's voyages, and published in 1784, is first referred to as showing the "*Sea of Kamtchatka*" in "absolute contradistinction to the *Great South Sea* or Pacific Ocean."

This is doubtless the Map included in the list attached to the despatch, and said to have been published by William Faden in 1784, a Map which has so far eluded our search.

Turning, however, to the Maps in the officially





published account of Cook's third voyage, of the same date, both those in the quarto and octavo editions, and those also in French and German translations of somewhat later date, it is found that Behring Sea appears absolutely and markedly *without any distinctive name*.

The Map published in the "London Magazine" in 1764, which is next referred to, is a reduction of Müller's Map, which is also particularly cited.

The circumstances under which the names *Sea of Kamtchatka* and *Sea of Anadir* appear on these Maps have been noted on a previous page, and are such as to show that these names, nor either one of them, can be justly referred to as applying to the area of Behring Sea as now known.

In further endeavouring to maintain his position as to the essential separateness of Behring Sea from the Pacific Ocean, as understood by geographers of the time, Mr. Blaine adds an enumeration of a number of Maps as "Inclosure B" to his letter above referred to.

This list of 105 Maps, though apparently formidable from its very length, is found to extend from the year 1743 to the year 1829, both inclusive, and consists solely of those Maps upon which a special designation of some kind is supposed to be found for Behring Sea.

As already stated, this proves nothing with regard to the relation of Behring Sea to the Pacific as a whole; while it is further observable that, in compiling the list, many Maps of very doubtful or imperfect character have been heterogeneously brought together.

Thus, in respect to Cook's explorations, but a single obscure Map is cited, while the official and original Maps are ignored, as has already been explained.

Again, from Thompson's large Atlas of date 1817 but a single Map is cited, and this without such reference as can enable it to be identified; while, as a matter of fact, in this Atlas, Behring Sea appears upon three Maps as the *Sea of Kamtchatka*. On three other Maps this name is evidently confined to the waters immediately adjacent to the peninsula of the same name, and on two, the greater part of Behring Sea is included without any name.

Under date 1819, a Map by Burney is quoted as showing the name *Sea of Kamtchatka* applied

Maps catalogued in
"Inclosure B,"
Mr. Blaine to Sir
Julian Pauncefoot,
December 17, 1890.

to Behring Sea, but the only Map by that author and of that date which we have been able to find is a "Chart of the North Coast of Asia and of the Sea to the North of Behring Strait," in which the greater part of Behring Sea is included, but without name, though the northern portion of the Sea of Okhotsk, also included, is prominently named.

Still, again, under 1825, a Map in Butlar's Atlas (doubtless No. 16) is quoted as showing the name *Sea of Kamtchatka*, while the first Map in that Atlas upon which Behring Sea appears without name (though the *Sea of Okhotsk* and other similar seas are named), is ignored.

This particular criticism applies, however, to but a small portion of the entire list, since the whole of the Maps in the list have not been examined.

Citations from various Authorities bearing on the Geographical use of the terms "Pacific Ocean," "Behring Sea," &c.

Fortunately, however, from a geographical point of view, we are not required to rely, for the settlement of such matters, on Maps alone, as to do so would leave many similar points in doubt in all parts of the globe. In the particular instance of the Pacific or North Pacific and Behring Sea it has been found easy to show, by reference to the strict verbal definitions of geographers in various standard works of reference and in official publications, that Behring Sea was and is understood to form an integral part of the Pacific Ocean.

The following are definitions found in the gazetteers, dictionaries, and geographers of the world, both of the present and old dates, touching the Pacific Ocean, Behring Sea, Kamtchatka, &c. :—

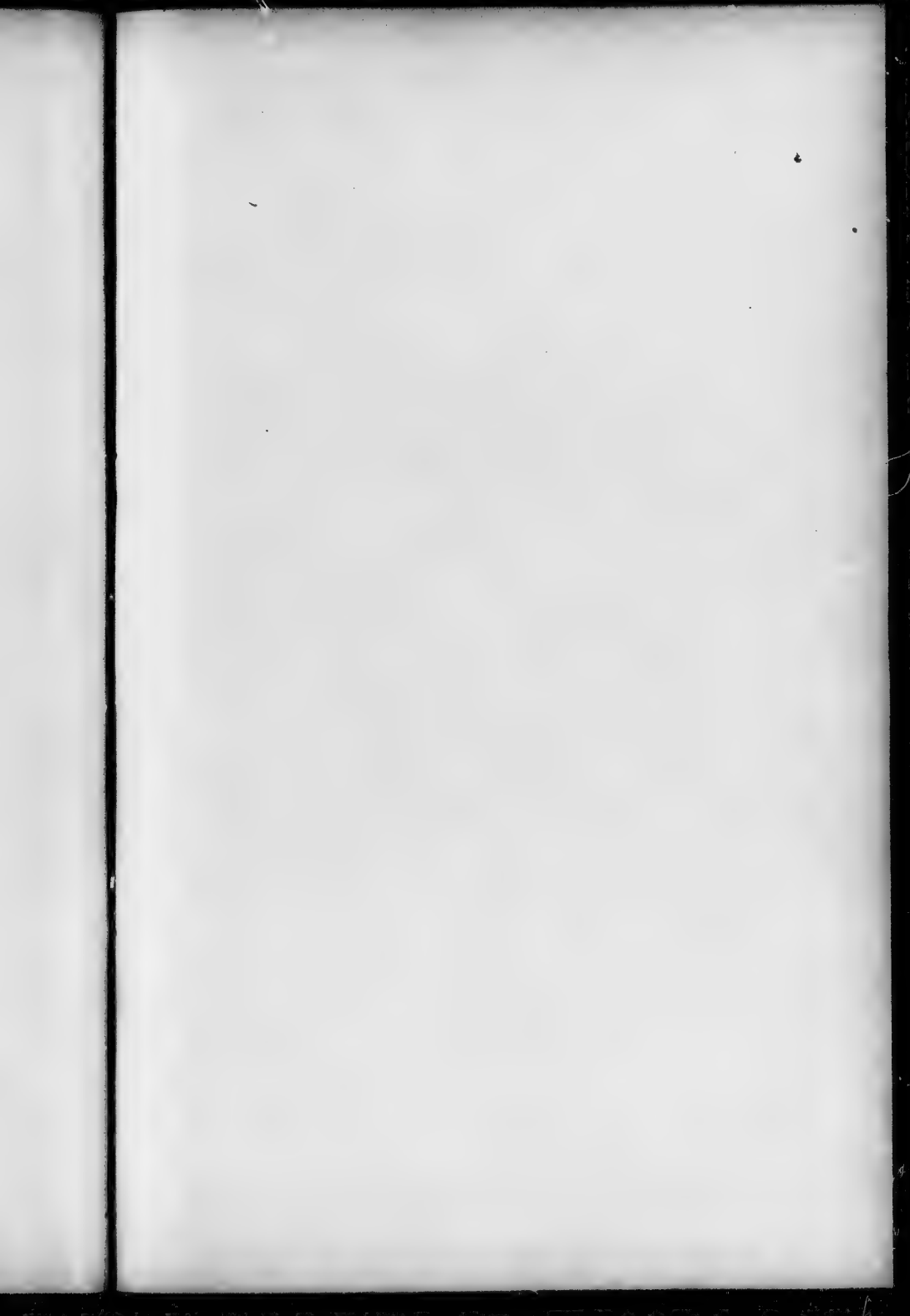
McCalloch's "Geographical Dictionary," vol. iii, English work.

Blackie's "Imperial Gazetteer," vol. ii, English work.

* "*Pacific Ocean*.—Stretches northward through 132 degrees of latitude to Behring Straits, which separate it from the Arctic Ocean."

"Boreal or North, extending from Behring Strait or the Arctic Circle to the Tropic of Cancer. . . . In the north the Pacific gradually contracts in width; the continents of America and Asia stretching out and approximating, so as to leave the comparatively narrow channel of Behring Strait as the only communication

* First twelve references should be verified.



between the Pacific and Arctic Oceans. Between the strait on the north, the Aleutian Islands on the south, and the remarkable peninsulas of Alaska on the east and Kamchatka on the west, one of the largest and best defined branches of the Pacific is the Sea of Behring."

"Extends from the Arctic to the Antarctic Circle, through 127 degrees of latitude."

"... It narrows especially towards the north, where it communicates with the Arctic Ocean by Behring Strait."

"Extends from the Arctic to the Antarctic Circle, through 126 degrees of latitude."

"... It narrows especially towards the north, where it communicates with the Arctic Ocean by Behring Strait."

"Behring Island, the most westerly of the Aleutian group in the North Pacific, in 55° 22' north latitude, 166° east longitude. It is rocky and desolate, and is only remarkable as being the place where the navigator, Behring, was wrecked and died in 1741. Population, 2,500."

"Behring Strait, the narrow sea between the north-east part of Asia and the north-west part of North America, connecting the North Pacific with the Arctic Ocean."

"Behring Strait, which connects the Pacific with the Arctic. . . ."

"Behring Island is situated in the North Pacific. . . ."

"Kamchatka, a peninsula projecting from the north-eastern part of Asia into the Pacific Ocean, i.e., into Behring Sea."

"*Extent*.—The Pacific Ocean, formerly called the South Sea, and sometimes still so named by the French and Germans (*la Mer Sud*; *Sudsee*, *Australocean*), with whom, however, *la Mer* (*l'Océan*) *Pacifique*, and *Grosser Ocean*, or *Stilles Meer*, are the more usual designations, is bounded on the north by Behring Strait and the coasts of Russia and Alaska; on the east by the west coasts of North and South America; on the south the imaginary line of the Antarctic Circle divides it from the Antarctic Ocean, while its westerly boundary is the east coast of Australia, the Malay Archipelago separating it from the Indian Ocean and the eastern coasts of the Chinese Empire. Some modern geographers place the southern limit of the Atlantic, Pacific, and Indian Oceans at the 40th parallel, and name the body of water which surrounds the earth between that latitude and the Antarctic Circle the Southern Ocean.

"Although differing from the Atlantic in its general form, being more nearly land-locked to the north, the Pacific Ocean resembles it, in being open to the south, forming, in fact, a great projection northwards of that vast Southern Ocean of which the Atlantic is another arm.

"The Pacific is the largest expanse of water in the world, covering more than a quarter of its surface, and comprising fully one-half of its water surface.

"It extends through 132 degrees of latitude—in other words, it measures 9,000 miles from north to south. From

Harper's "Universal Gazetteer," American work
Also Johnston's "Dictionary of Geography," English work.

Johnston's "General Gazetteer," English work.

"Encyclopædia Britannica," ninth edition, New York, 1878.
vol. iii, p. 609.

The "English Encyclopædia."

"Encyclopædia Britannica," ninth edition, Edinburgh, 1885,
vol. xviii, p. 115.

Johnston's "Dictionary of Geography."

"Imperial Gazetteer," vol. i, Harper's "Universal Gazetteer," and Murray's "Gazetteer of the World." Scotch work. Gives same description.

east to west its breadth varies from about 40 miles at Behring Strait, where Asia and America come within sight of each other, to 8,500 miles from California and China, on the Tropic of Cancer, and to more than 10,000 miles on the Equator, between Quito and the Moluccas, where the ocean is the widest. The area has been variously estimated at from 50,000,000 to 100,000,000 square miles; but defining its boundaries as above, Keith Johnston, from careful measurement, estimated it, with probably a near approach to the truth, at 67,810,000 square miles."

"*Bering Sea*.—That part of North Pacific Ocean between Aleutian Islands and Behring Strait.

"Is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring Strait.

"Kamschatka Sea is a large branch of the Oriental or North Pacific Ocean."

"Beering's Straits, which is the passage from the North Pacific Ocean to the Arctic Sea."

"Beering's Island. An island in the Pacific Ocean. [Behring's Island is in Behring's Sea.]

"Kamschatka. Bounded east and south by Pacific."

"Kamtchatka. Bounded on the north by the country of the Koriacs, on the east and south by the North Pacific Ocean, and on the west by the Sea of Okotsk."

"Beering's Island. In the North Pacific Ocean."

"Beering's Island. An island in the North Pacific Ocean.

"Kamtchatka. River, which runs into the North Pacific Ocean.

"Kamtchatka. Peninsula, bounded on the east and south by the North Pacific Ocean."

"Islands in the Eastern or Great Pacific Ocean: Bhering's Isle."

"Stilles Meer. Vom 5 nordl. Br. an bis zur Beringsstrasse aufwärts stets heftige Stürme." [Behring's Strait is at the northern extremity of Behring's Sea.]

"Behring's Island. An island in the North Pacific Ocean."

"Beering's Island. In the North Pacific Ocean."

"Beering's Island. In the Pacific."

"Mer Pacifique. Il s'étend du nord au sud depuis le Cercle Polaire Arctique, c'est-à-dire, depuis le Détroit de Behring, qui le fait communiquer à l'Océan Glacial Austral."

"Stilles Meer. Vom 30 südlicher Breite bis zum 5 nördlicher Breite verdient es durch seine Heiterkeit und Stille den namen des Stillen Meers; von da an bis zur Beringsstrasse ist es heftigen Stürmen unterworfen."

"Beering's Island. In the North Pacific Ocean."

"Behring's Strait connects the Frozen Ocean with the Pacific.

"The Anadir flows into the Pacific Ocean.

"The principal gulfs of Asiatic Russia are: the Gulf of Anadir, near Bhering's Strait; the Sea of Penjina, and the Gulf of Okhotsk, between Kamtschatka and the mainland of Russia—all three in the Pacific Ocean."

"Worcester's Dictionary."

Malham, John, "Naval Gazetteer," 1795.

Brookes, E., "General Gazetteer," 1802.

Montefiore "Commercal Dictionary, 1803."

"Geographical Dictionary," London, 1804.

Crutwell, C., "New Universal Gazetteer," 1808.

Magnall, R., "Compendium of Geography," 1816.

Galletti, J. G. A., "Geographisches Wörterbuch," Ponth, 1822.

"Edinburgh Gazetteer," edition 1822, vol. i, p. 492.

"General Gazetteer," London, 1828.

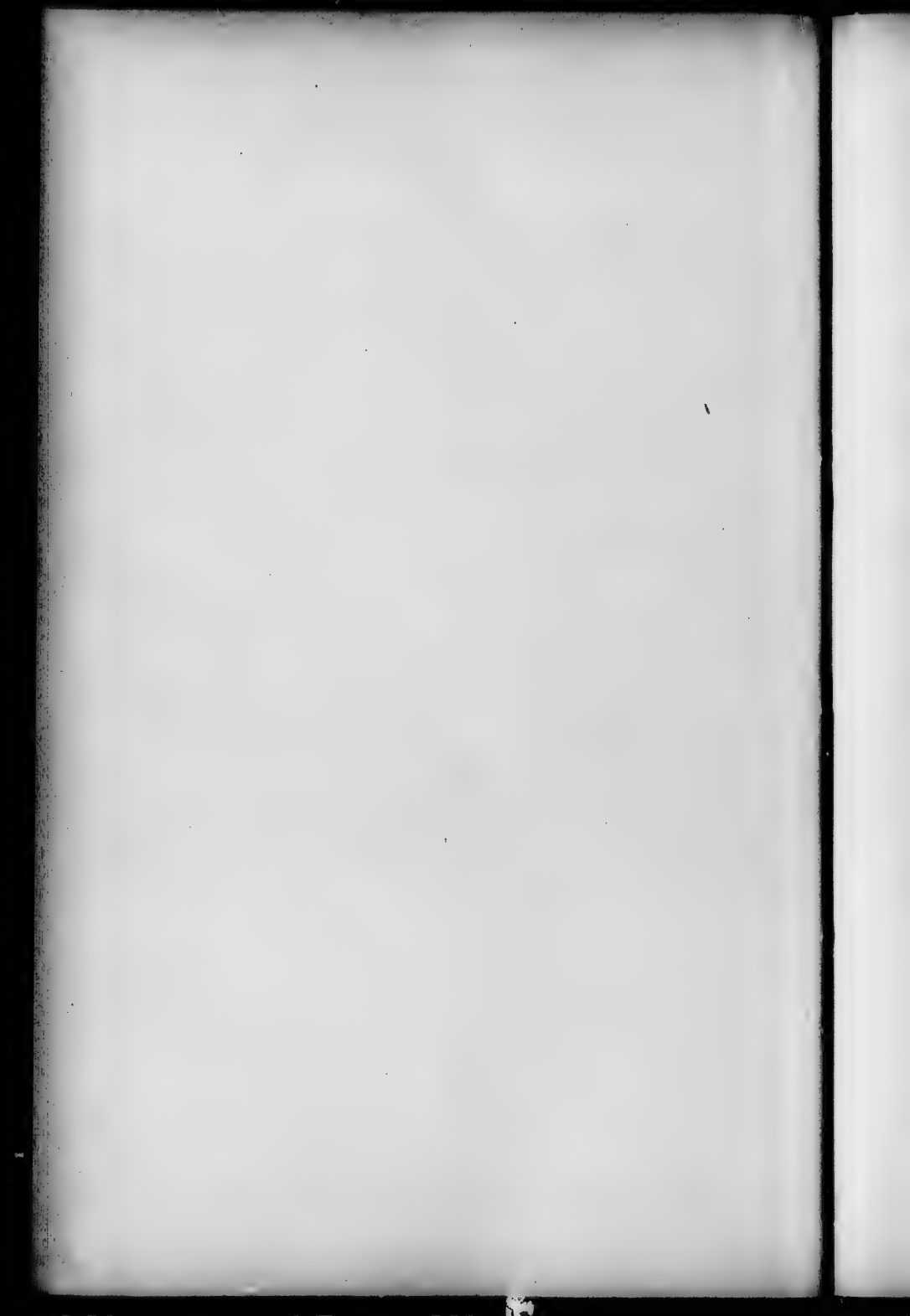
"New London Universal Gazetteer," 1829.

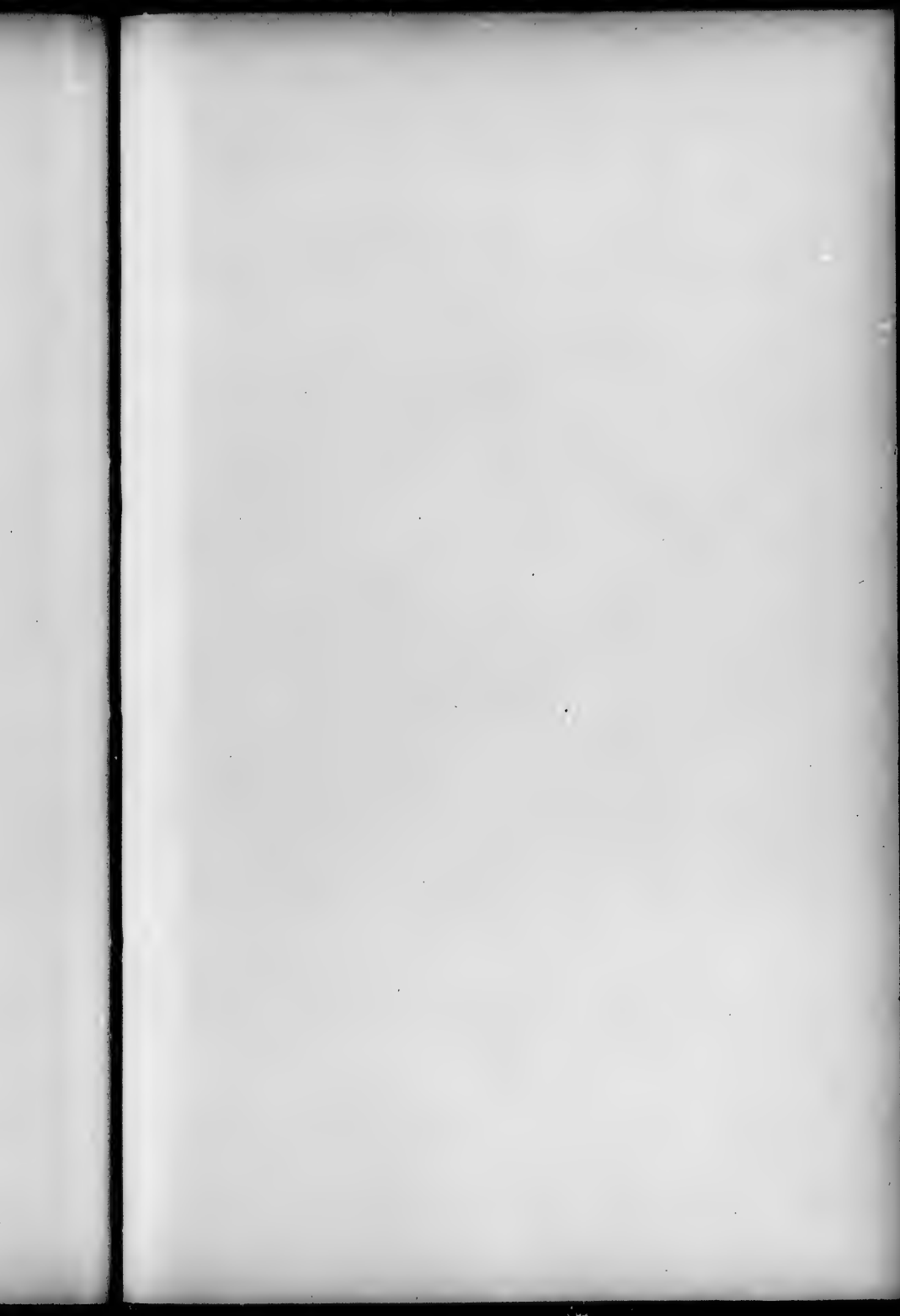
"Dictionnaire Géographique Universel," 1839.

Seitz, Dr. J. C., "Geographisches Statistisches Handwörterbuch," Feb. 1829, Halberstadt, 1830.

"Penny National Library Geography and Gazetteer," 1830.

Arrowsmith, "Grammar of Modern Geography," 1832.





"L'Océan Pacifique Boréal s'étend depuis le Détroit de Behring jusqu'au tropique de Cancer." *"Précis de la Géographie Universelle," par Malte-Brun, vol. II, p. 181, édition 1888.*

"Le Détroit de Behring. A commencer par ce détroit, le Grand Océan (ou Océan Pacifique) forme la limite orientale de l'Asie." *Ditto, vol. VIII, p. 4.*

"Behring (détroit célèbre). Il joint l'Océan Glacial Arctique au Grand Océan." *Langlois, "Dictionnaire de Géographie," 1838.*

"The Pacific Ocean. Its boundary-line is pretty well determined by the adjacent continents, which approach one another towards the north, and at Behring's Strait, which separates them, are only about 36 miles apart. This strait may be considered as closing the Pacific on the north." *"Fanny Cyclopaedia," 1840.*

"Behring (Détroit de), à l'extrémité nord-est de l'Asie, sépare l'Amérique du Nord de l'Asie, et l'Océan Glacial Arctique de l'Océan Pacifique." *Dictionnaire Universel d'Histoire et de Géographie," par M. N. Bouillet, Paris, 1842.*

"Behring (Mer de). Partie de l'Océan Pacifique." *"Dictionnaire Géographique et Statistique," par Adrien Guibert, Paris, 1850.*

"Behring (Détroit de). Canal de l'Océan . . . unissant les eaux de l'Océan Pacifique à celles de l'Océan Arctique." *"The Gazetteer of the World," Thomas Jock, London, 1884.*

"Behring Sea, or Sea of Kamchatka, is that part of the North Pacific Ocean between the Aleutian Islands, in latitude 55° north, and Behring Strait, in latitude 66° north, by which latter it communicates with the Arctic Ocean." *"The New American Cyclopaedia," edited by George Ripley and Charles A. Dana, New York, 1851.*

"Pacific Ocean. Between longitude 70° west and 110° east, that is, for a space of over 180°, it covers the greater part of the earth's surface, from Behring Straits to the Polar Circle, that separates it from the Antarctic Ocean." *"Grand Dictionnaire de Géographie Universelle," par M. Bescherelle, Atlas, 4 vols., 1855.*

"Behring (Détroit de). Canal du Grand Océan unissant les eaux de l'Océan Pacifique à celles de l'Océan Glacial Arctique." *"Imperial Gazetteer," 1885.*

"Behring Sea, sometimes called the Sea of Kamchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Strait." *Fullarton's "Gazetteer of the World," 1886.*

"Behring's Island. An island in the North Pacific Ocean." *"Cyclopedia of Geography," by Chas. Knight, 1856.*

"Behring's Strait, which connects the Pacific with the Arctic Ocean, is formed by the approach of the continents of America and Asia." *McCulloch's "Geographical Dictionary," edited by F. Martin, 1866.*

"Pacific Ocean. Its extreme southern limit is the Antarctic Circle, from which it stretches northward through 132° of latitude to Behring's Strait, which separates it from the Arctic Ocean." *"Grand Dictionnaire Universel," par M. Pierre Larousse, Paris, 1867.*

"Behring (Détroit de). Canal ou bras de mer unissant les eaux de l'Océan Glacial Arctique à celles de l'Océan Pacifique." *"Encyclopedia Britannica," 1876, St. Martin.*

"Behring's Strait. The narrow sea between the north-east part of Asia and the north-west part of North America, connecting the North Pacific with the Arctic Ocean." *Lippincott's "Gazetteer of the World," Philadelphia, 1880.*

"Behring Sea, or Sea of Kamchatka, is that part of the North Pacific Ocean between the Aleutian Islands in latitude 55° north and Behring Strait in latitude 66° north, by which latter it communicates with the Arctic Ocean." *Bryce and Johnston, "Cyclopedia of Geography," London and Glasgow, 1880.*

"Behring, or Bhering. A strait, sea, island, and bay, North Pacific Ocean." *Brookhaus' "Conversations Lexicon," Leipzig, 1882.*

"Behring's Meer. Der nordöstlichste Teil des Stillen Ozeans." *Brookhaus' "Conversations Lexicon," Leipzig, 1882.*

Ritter's "Geographisch Statistisches Lexicon," Leipzig, 1859.

"Pocket Encyclopedia," Sampson Low, 1888.

Chambers' "Encyclopedia," 1889.

Bischoff's "Modern Cyclopaedia," 1889 edition.

Harper's "Statistical Gazetteer of the World," by J. Colvin Smith, New York, 1888.

"Beringstrasse. Meerenge das nordöstlichste Eismeer mit dem Stillen Ocean verbindend."

"Behring's Sea. North-east part of the Pacific between Asia and America."

"Behring Strait connects the Pacific with the Arctic Ocean."

"Behring Sea. A part of the Pacific Ocean, commonly known as the Sea of Kamchatka."

"Behring's Strait, connecting the North Pacific with the Arctic Ocean."

"Behring's Sea, sometimes called the Sea of Kamchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Strait."

"Behring Strait, the channel which separates Asia and America at their nearest approach to each other, and connects the Arctic with the Pacific Ocean."

"Russian America comprises the whole of the continent of North-west America west of longitude 141° west and a strip on the coast extending south to latitude 55° north, bounded on the east by British America, south and west by the Pacific Ocean, and north by the Arctic Ocean and the following island groups, &c."

The following letter, addressed to Mr. Robert Rayner by Professor Alexander Supan, and published by Mr. Rayner in an article by him on the Behring Sea question in the New York "Evening Post," of the 11th March, 1891, is of particular interest as embodying the opinion of one of the most eminent geographical authorities of the day on the subject of the relations of Behring Sea to the Pacific:—

"(Translation.)"

"Justus Perthes' Geographical Institute,
"Editorial Rooms,

"Office of Petermann's Communications.

"Honoured Sir, "Gotha, November 10, 1887.

"In answer to your honoured letter of the 24th October, I beg to make the following remarks:

"Behring's Sea is considered by all geographers as a part of the Pacific Ocean, and there cannot be [the] least doubt with regard to this, [from] however different principles of division one may start.

"Behring's Strait is the natural topographical boundary of two great sea basins, the Pacific and the Arctic, and this all the more as it nearly coincides with the northern Polar Circle. In addition, there is the consideration that sea arms shut off by chains of islands are just one of the characteristic marks of the western part of the Pacific Ocean. As little as one can detach the Sea of Okhotsk or the Sea of Japan from the Pacific Ocean, just so little can one consider Behring's Sea as independent. A comparison with such inland waters as Delaware Bay or the Sea of Azov appears entirely inadmissible.

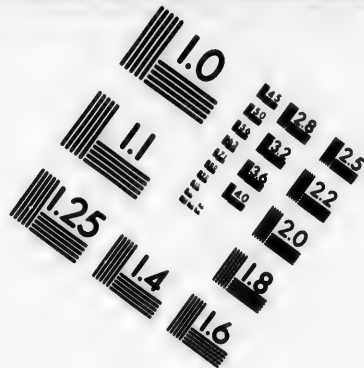
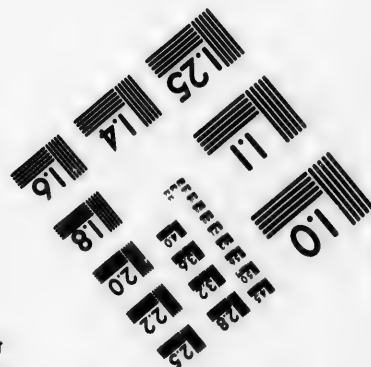
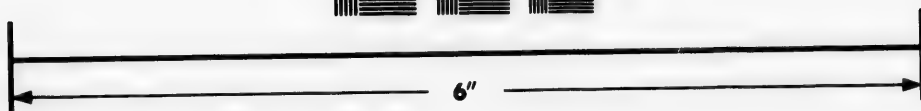
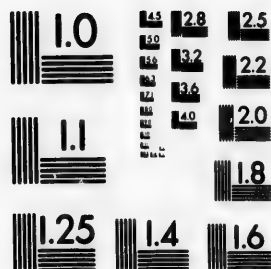


IMAGE EVALUATION TEST TARGET (MT-3)

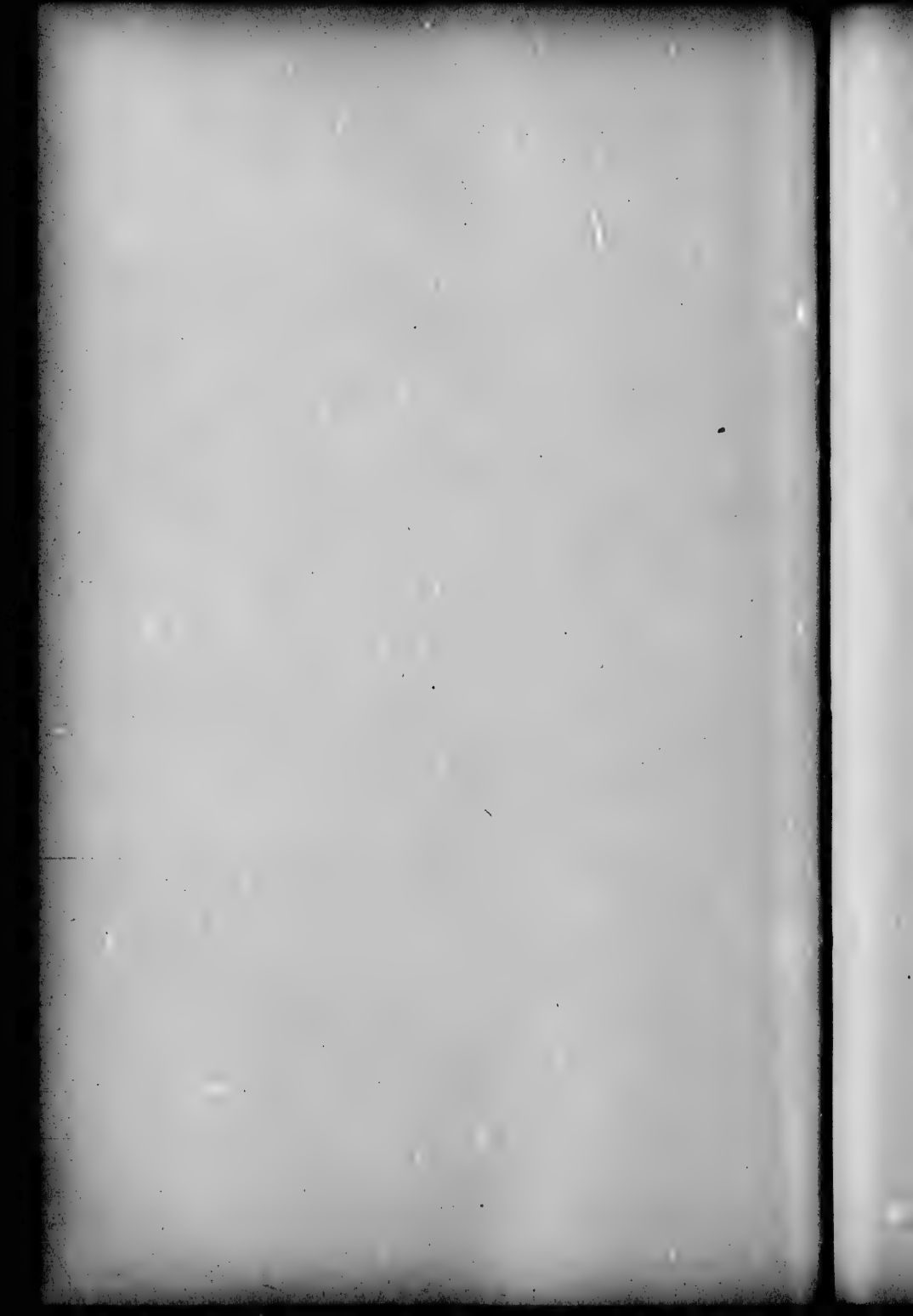


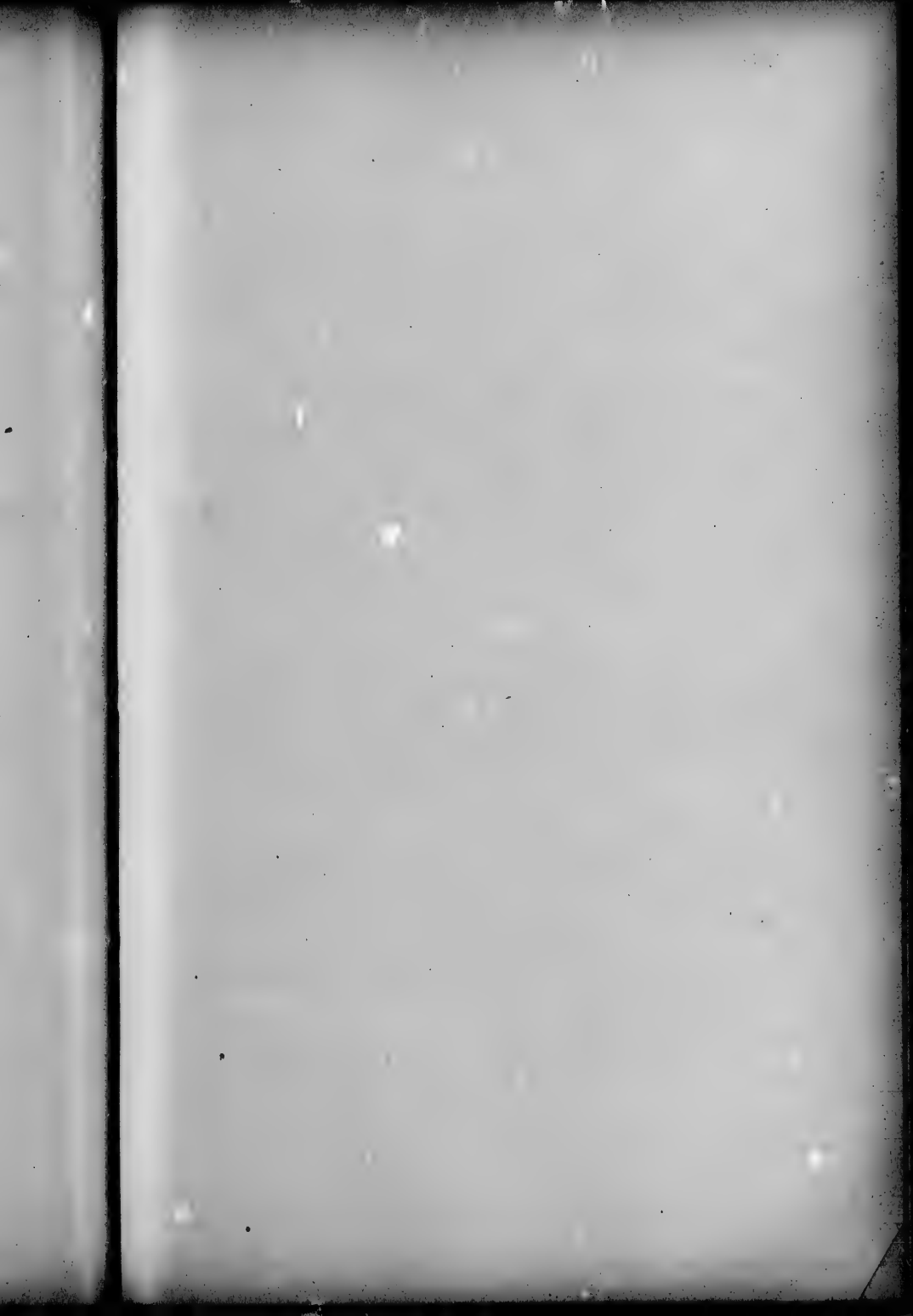
Photographic Sciences Corporation

**23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503**

2.8
2.5
2.2
2.0

10
01





"It is, however, [certainly] a different question how [what] the Treaty Powers thought on this point in 1824. Up to the year 1845 there was great [much] caprice and divergence in the division and appellation of the great seas. However, the wording of the Treaty of 1824 shows that one was already acquainted with the division of Buache (1752), for he was the first one to introduce the name Great Ocean. In this division Behring's Sea belonged to the 'Mer Septentrionale du Grand Océan.' Forster, the celebrated companion of Cook, also is beyond doubt in this regard (see [his] collected writings, vol. iv, p. 9, f).

"It must be noted that in Fleurien's time (year eight of the first French Republic) the two ice seas (Arctic and Antarctic) were not yet separated [were not yet looked upon as separated] from the other three oceans. When Fleurien introduced this separation, he took the Polar Circles as boundaries, and to this the British Commission of 1845 also assented, as is well known. Consequently, here also Behring's Sea appears as part of the Pacific Ocean.

"Hoping that these remarks will be sufficient for you, I remain, &c.

(Signed) "PROF. DR. ALEX. SUPAN,
"Editor of *Petermann's Communications*.

"Mr. Robert Rayner,
"Salem, Massachusetts."

In reply to a request sent by Dr. George M. Dawson to Professor Supan for a copy of the above letter, as originally written in German, that gentleman has been so kind as to write further, as follows:—

"(Translation.)

"*Justus Perthes' Geographical Institute,*

"Most honoured Sir, "Gotha, July 15, 1892.

"Unfortunately I do not possess a copy of my letter to Mr. Rayner, but the translation appears to me to be on the whole correct. Rayner asked me what was my opinion on the question from a geographical point of view, and my reply falls under two heads:—

"1. The present geographers collectively, so far as I know, consider Behring Sea as part of the Pacific Ocean, and from whatever point of view the question is considered, the conclusion always arrived at is that Behring Sea is an annex of the Pacific.

"2. This view, moreover, also generally prevailed as early as 1824, as the two earliest attempts at classification agree in it. What view was held by the Governments of the day is, however, questionable, as there are enough instances to show that Governments trouble themselves but little with science.

"With the highest consideration, I remain, &c.

(Signed) "ALEX. SUPAN."

II.

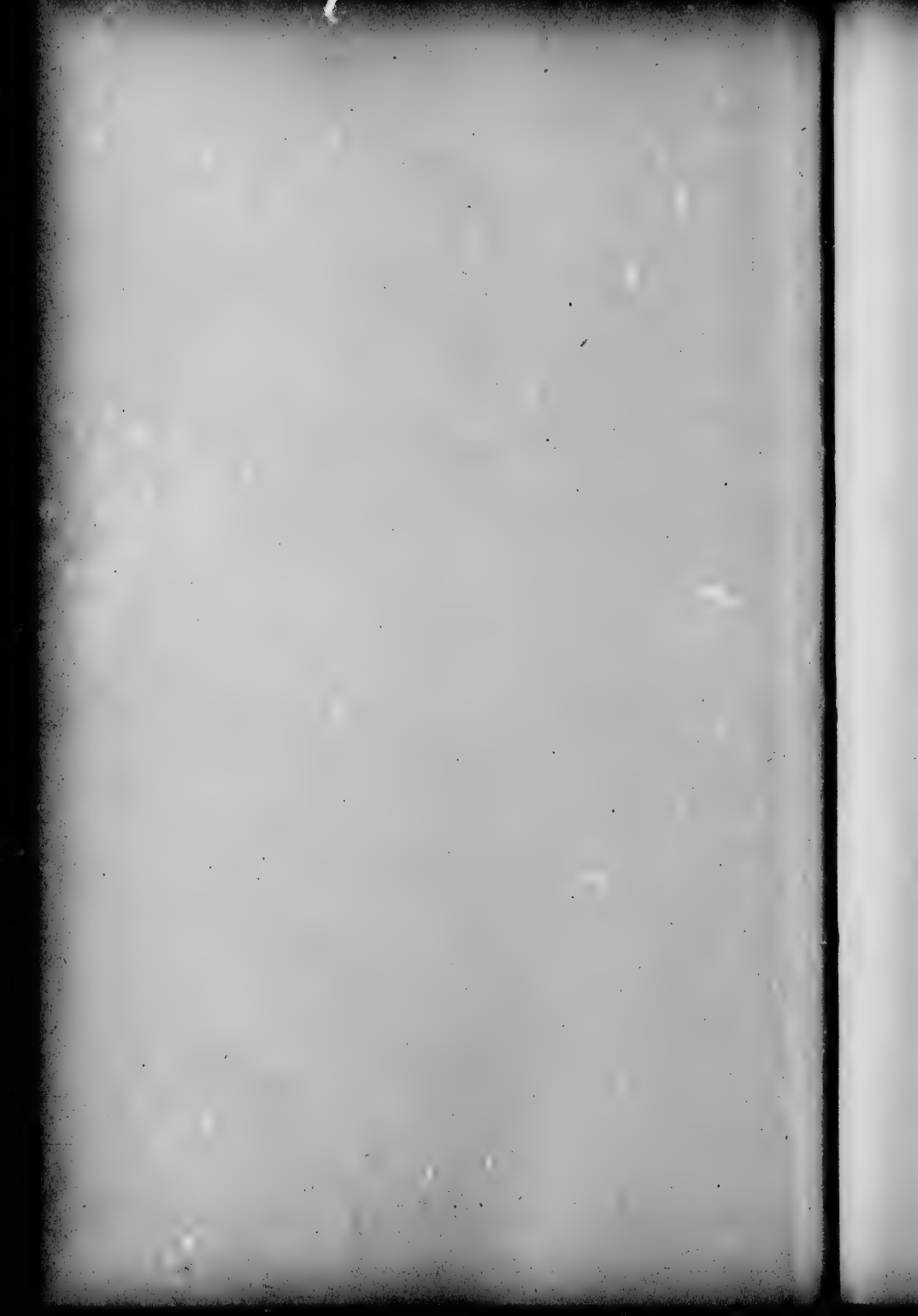
In the foregoing pages the subject of the relation understood to exist between the Pacific and Behring Sea has been particularly in view, but it has nevertheless been impossible to entirely separate certain allusions bearing on the extent of the north-west coast, as particularly important, among which may be noted Mr. Greenhow's definition. Some notes are, however, given below on the subject of the north-west coast as separately considered.

The contention held by Mr. Blaine, for the United States, on this particular point, is explained by him as follows:—

"The dispute prominently involves the meaning of the phrase 'north-west coast,' or 'north-west coast of America.'

"The contention of this Government is that by long prescription the 'north-west coast' means the coast of the Pacific Ocean, south of the Alaskan Peninsula, or south of the 60th parallel of north latitude; or, to define it still more accurately, the coast, from the northern border of the Spanish possessions, ceded to the United States in 1819, to the point where the Spanish claims met the claims of Russia, viz., from 42° to 60° north latitude. The Russian authorities for a long time assumed that 59° 30' was the exact point of latitude, but subsequent adjustments fixed it at 60°. The phrase 'north-west coast,' or 'north-west coast of America' has been well known and widely recognized in popular usage in England and America from the date of the first trading to that coast, about 1784. So absolute has been this prescription that the distinguished historian, Hubert Howe Bancroft, has written an accurate history of the north-west coast, which at different times, during a period of seventy-five years, was the scene of important contests between at least four Great Powers. To render the understanding explicit, Mr. Bancroft has illustrated the north-west coast by a carefully prepared Map. The Map will be found to include precisely the area which has been steadily maintained by this Government in the pending discussion.

"The phrase 'north-west coast of America' has not infrequently been used simply as the synonym of the 'north-west coast,' but it has also been used in another sense as including the American coast of the Russian possessions as far northward as the Straits of Behring. Confusion has sometimes arisen in the use of the phrase 'north-west coast of America,' but the true meaning can always be determined by reference to the context."





It can, however, be shown by actual reference to published Maps and documents (apart from the negotiations leading up to the conclusion of the Conventions of 1824 and 1825, already cited):

(1) That *North-west Coast of America* and *North-west Coast* are practically identical expressions, "America" being in the latter case understood, and the abbreviated form being merely arrived at by the elision of that word. (2.) That the full meaning of the term, in either form, included the western coast of North America from an indefinite point to the southward, northward, and definitely as far as Behring Strait. (3.) That in one or other form it has nevertheless been largely employed in an indefinite way as a general name for various different parts of the west coast of North America.

The term *North-west Coast*, or, more fully, *North-west Coast of North America*, is in fact a descriptive one of a somewhat peculiar character.

Looking at the Map, it will be seen that the coast which has not infrequently been so named is in reality the westerly—or south-westerly—facing coast of North America, which forms the eastern and north-eastern coast-line of the North Pacific.

This term, however, appears in the title of some very early Maps, such as that by Müller, dated 1761, which is entitled, "A Map of the Discoveries made by the Russians on the North-west Coast of America; that accompanying the original edition of Cook's third voyage, dated 1784, and entitled, "Chart of the North-west Coast of America and the North-east Coast of Asia;" and that in Vancouver's voyage (1798), named "A Chart showing part of the Coast of North-west America."

The last-named Map, however, affords a clue to the meaning of the term, and shows that, in these instances, we should read in full "Coast of the North-western part of the North American continent," and, converseley, "Coast of the north-eastern part of the continent of Asia." This is particularly obvious, when it is remembered that, especially in the case of the first of the Maps above referred to, the explorations set down were conducted from Russia, by way of Okhotak, in the sea of the same name, and that, consequently, if direction from the point of departure had been considered, what is named the north-east coast of Asia would have in reality been the *north-west coast* of that continent.

It is very probable that a special and somewhat different meaning came to be connected with the *North-west Coast of America* at a later date, when it was regarded and spoken of by inhabitants of the United States, situated in a south-easterly bearing from all this part of the North American coast; but, in admitting this, it is also evident that the *north-west coast*, as thus secondarily applied, must have included the whole coast lying north-westerly from the point of observation, or trending from any given point of departure on the west coast of the continent in a general north-westerly direction.

It has, however, been maintained that, at some still later date, the term *north-west coast* came to bear a quite definite signification as referring to a certain particular part of the western coast of North America.

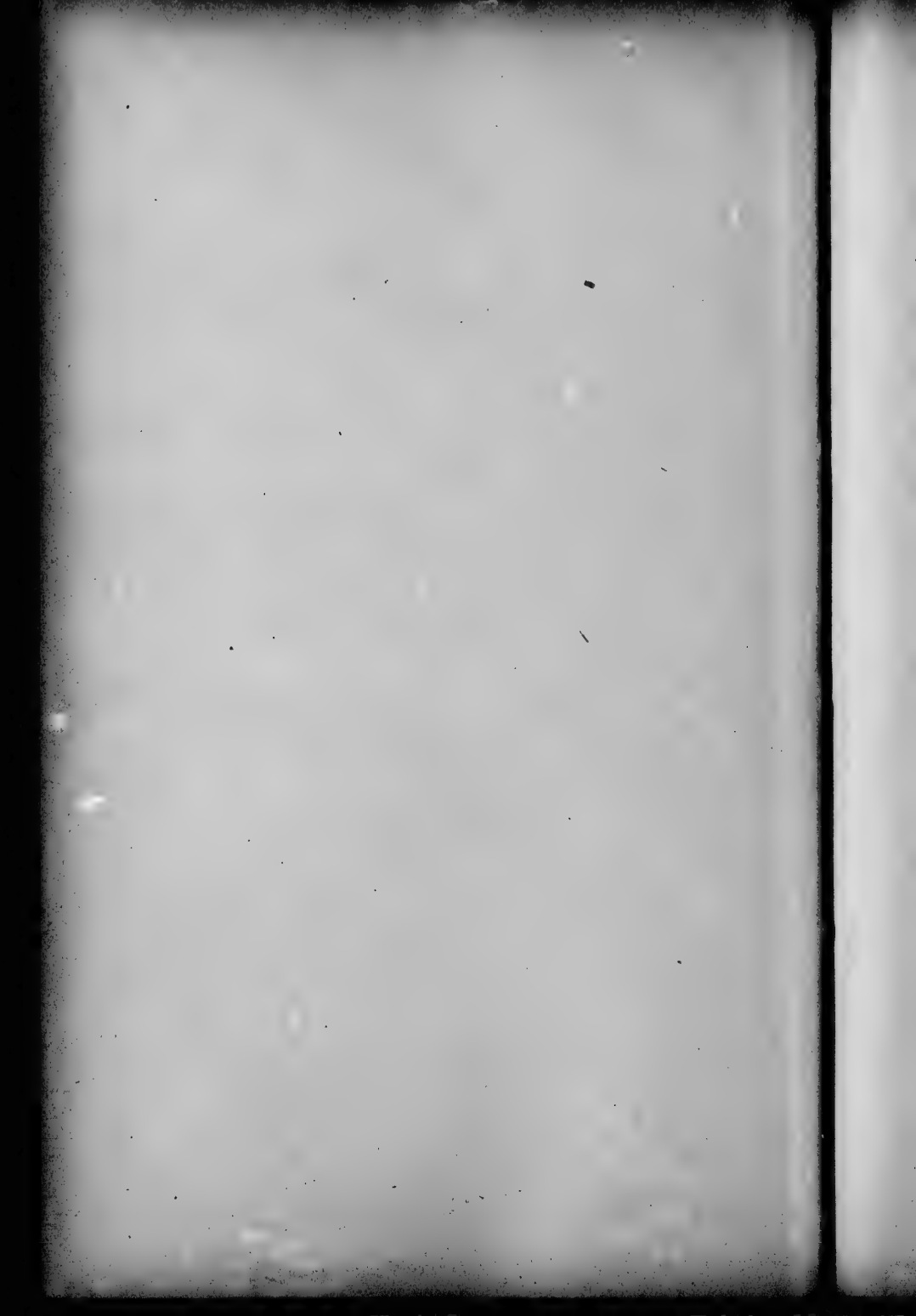
In this case such usage may be expected to be found recorded on the Maps at some particular epoch, and thereafter to have been continued with precision.

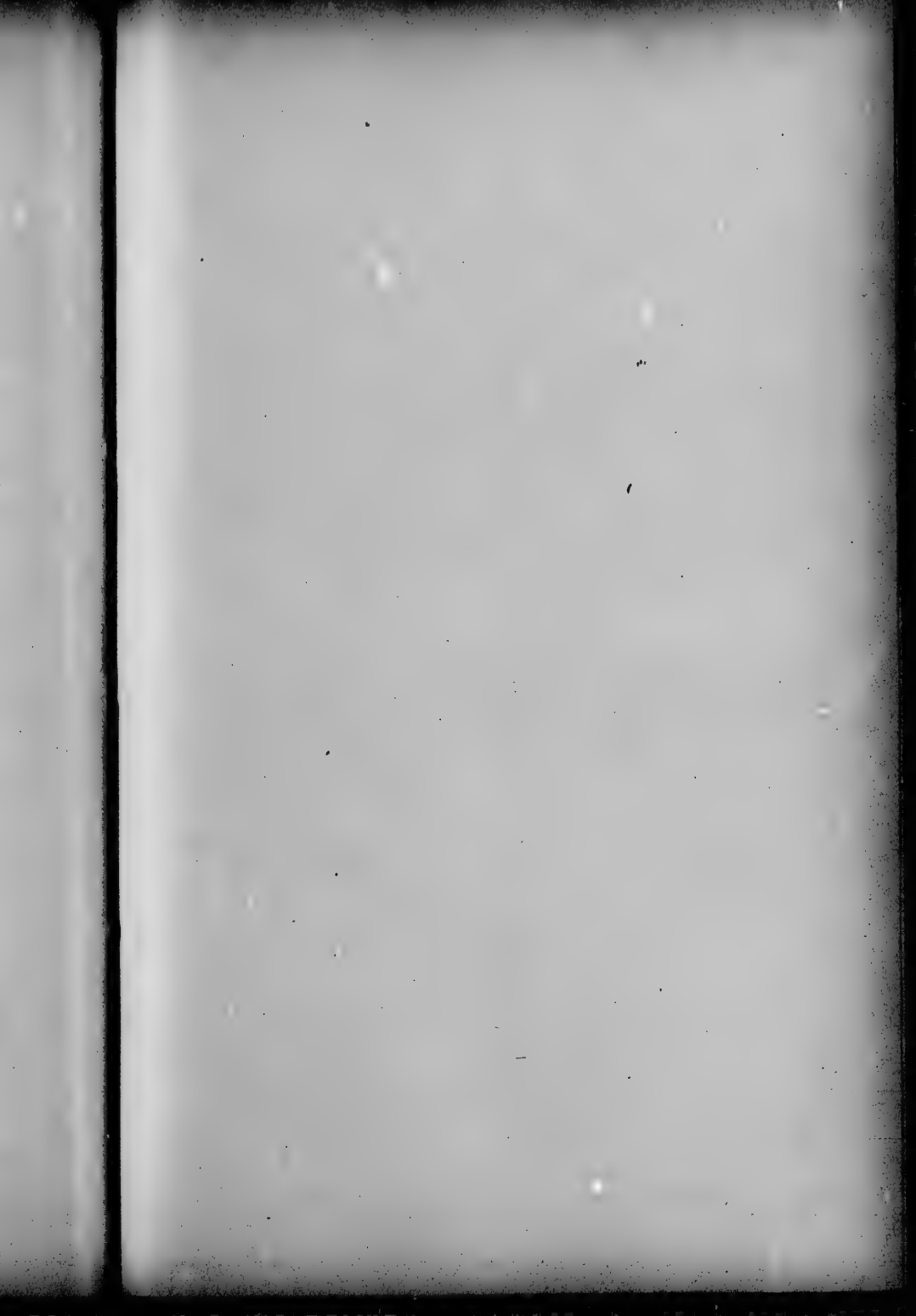
The term is seldom found as a geographical one defined verbally (see, however, Greenhow, *supra cit.*), and thus it is to Maps that we may turn with the hope of finding it with this particular meaning.

As the result of the examination of a large series of Maps, relating particularly to the dates near to that of the Ukase of 1821 and the Conventions of 1824 and 1825, it is, however, disappointing to observe that this term is seldom met with, and then only in a very lax and general meaning.

Müller's Map of 1761, republished by Jeffreys in London, has already been referred to. The description "*North-west Coast of America*" here occurs in the title only, while the coast delineated extends to what is now known as Behring Strait. A Map published in the "*London Magazine*" in 1764, also refers to "*North-west Coast of America*" in its title, but as it is merely a reduced copy of Müller's Map, does not throw any further light on the subject.

Coming down to the date of Cook's third voyage in 1784, we again find a corresponding title, viz., "*Chart of the North-west Coast of America and North-east Coast of Asia*." This Chart is drawn so as to include the coast from the vicinity of the point where it was first reached by Cook (about latitude 44°) to Icy Cape,





to the north of Behring Strait, and in the Arctic Ocean. The same remarks apply to the corresponding Map in the French edition of Cook's Voyage, dated 1785.

In 1798, Vancouver's Voyage contains "A Chart showing part of the coast of North-west America," and this includes the coast-line continuously from latitude 30° to a point a little west of Kadiak Island.

A few years later, in 1803, we find Charts 1 to 8 published in connection with the voyage of the "Sutil" and "Mexicana," in Madrid, entitled, "La Costa Nord-ouest de America." These continuously include from about latitude 17° northward and westward to Unalaska Island in the Aleutian claim.

Another Chart, also published in 1803, by the Quartermaster-General's Department, Russia, shows (in Russian characters) the legend "part of the north-west coast of America" running on the continental land from a point near the coast and to the north of Behring Strait, continuously to a point between the 53rd and 54th degrees of latitude.

In Rossi's Atlas, published in Milan in 1831, on Map 6, the name *Costa nord-ouest* actually appears engraved on the face of the Map, and runs from a point a little to the west of the head of Cook's Inlet on the continental land southward to about the 50th parallel, while on another Map in the same Atlas (No. 89) the words *Parte della Costa Nord-ouest dell' America* are shown extending along the land from the longitude of Kadiak southward to latitude 39°, or much further than in the first instance, notwithstanding the restriction of the title.

In "Boquefeuil's Voyages," published in Paris in 1828, a Map occurs, entitled "Carte de la Côte Nord-ouest d'Amérique," and this includes an extent of coast from latitude 84° 30' northward and westward to the mainland coast west of Kadiak Island.

Some years later, in 1844, on the elaborate Map accompanying M. Duflot de Mofras' work, published in Paris in 1844, "Côte Nord-ouest de l'Amérique," is engraved running to seaward of that part of the coast which extends from latitude 60° to the entrance of the Strait of Fuca.

The above are all of the Maps included in the list, elsewhere given, upon or in connection with which the term *North-west Coast* or *North-west*

Coast of America, or its equivalents, has been found. None of the works published in the United States at about the dates specially referred to have been found to include it.

Mr. Blaine, in his despatch of the 17th December, 1890, specially refers to a Map "published by the Geographical Institute at Weimar" in 1803, as showing the *Nord West Kuste*, which is said to include "the coast from the Columbia River (49°) to Cape Elizabeth (60°)." It has so far been impossible to consult this Map, but the description given of it may doubtless be assumed as correct. It will be noted that the usage here found does not precisely agree with that on any of the above-cited Maps, though most nearly to that of Duflet de Mortin.

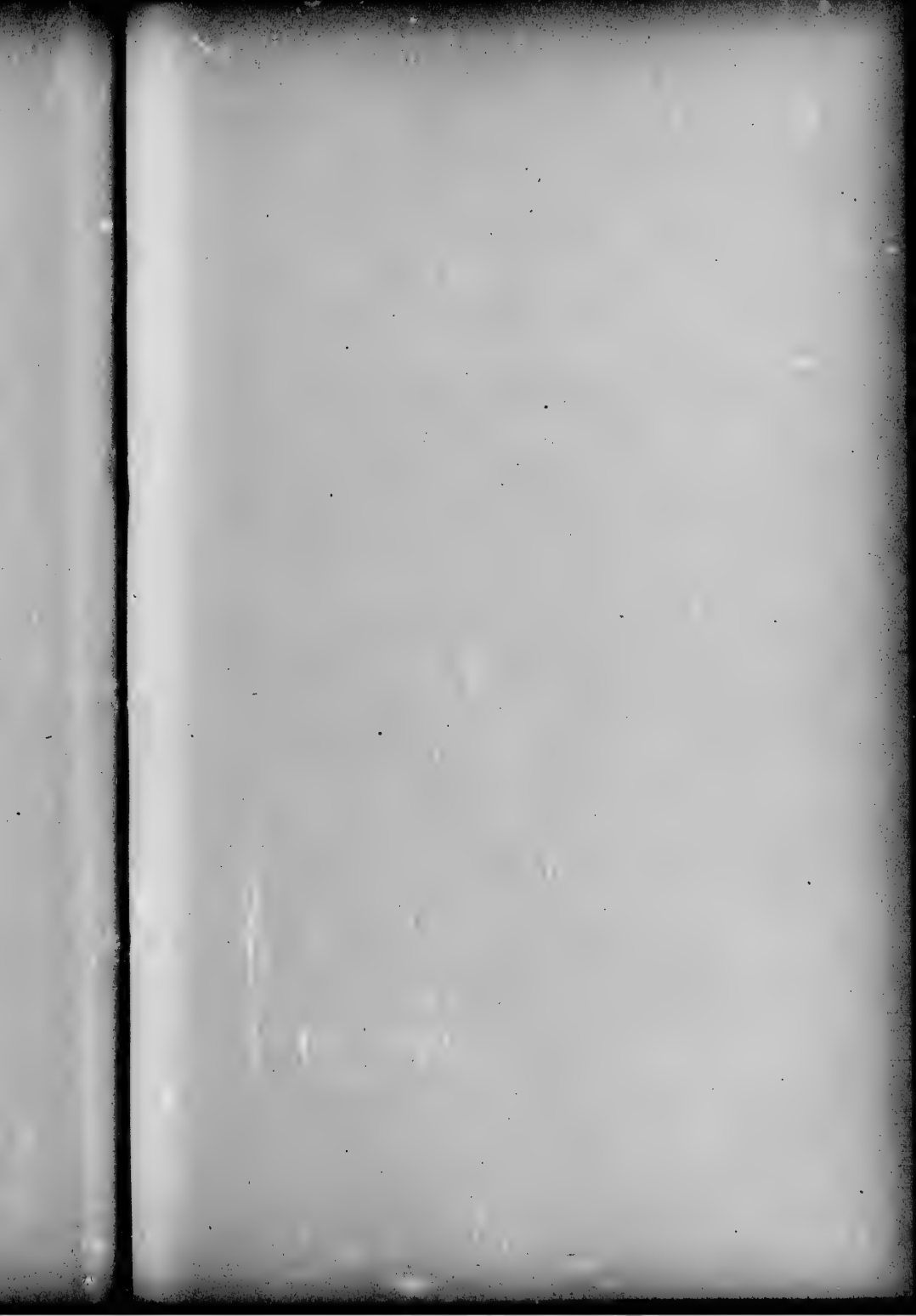
In Burney's "Chronological History of North-eastern Voyages of Discovery," London, 1819, Chapter 19 is entitled "Captain Cook on the North-west Coast of America." This title is continued as a side-note to the pages following as far as to p. 229, or from the point at which Cook first sighted the land in latitude 44½° to Unalaska. After this point "west coast" is substituted for "north-west coast," showing very clearly where the author, who was a member of Cook's expedition, supposed the north-west coast to end.

(Compare Greenhow's definition of north-west coast, *ante*.)

Coming down, however, to much later times, numerous instances might be quoted showing that the term was not restricted to the limits contended for by Mr. Blaine, and that it has generally been used with the utmost laxity, even by those likely to be best informed on the subject. Witness the following:—

"North-west Coast of America, United States' Coast Survey, Benjamin Peirce, Superintendent, 1868," sheets 1 to 8. These include the coast continuously from the vicinity of the Strait of Fuca (sheet 1) to some distance west of Kadiak and Seven Islands (sheet 3), ending to the westward between the 157th and 158th meridians, and showing the eastern part of Bristol Bay.

Thus, in the United States' "Alaska Pacific Coast Pilot," Part I, 1883, which was edited by Mr. W. H. Dall (a gentleman whose familiarity



with all historical and geographical points connected with the west coast is well known), on p. 287, under "List of Charts issued by the United States Coast and Geodetic Survey—Sailing Charts—*North-west Coast of America*," is found catalogued "No. 4, Chirikoff Island to Nunivak." This particular Chart is entered as "in preparation," but its title carries the term "north-west coast" up to or beyond latitude 60° within Behring Sea.

In Mr. Blaine's despatch of the 17th December, 1890, particular importance is, however, attached to a small and rather poorly engraved Map which appears in Mr. H. H. Bancroft's works, vol. xxvii (1884), which is the first of two volumes entitled "History of the North-west Coast."

This Map is entitled "Map of the North-west Coast," and is actually reproduced in fac-simile in the despatch. This Map appears to be regarded as an argument conclusive in itself, and it is said of it, "The Map will be found to include precisely the area which has been steadily maintained by this Government in the pending discussion."*

If Mr. Blaine had written "precisely that part of the west coast of America," he would have been more accurate, for of this coast the Map in question actually includes from about latitude 40°, in the vicinity of Cape Mendocino, to the vicinity of that part of the coast where latitude 60° reaches the Pacific.

The area of the Map is, however, a very different matter, as it stretches eastward so as to include Hudson Bay and Strait, Davis Strait, and the St. Lawrence River nearly to its mouth: in fact, almost the entire northern width of the North American Continent. We are fortunately, however, not obliged to criticise this point alone by the exigencies which determined the lines upon which this particular Map was cut off by the draftsman—for it is evidently by its construction a reproduction of some part of a more inclusive Map of the continent.

* Mr. Blaine does not appear to have noticed one curious circumstance connected with this "carefully prepared Map." In the northern part of the Map, each tenth degree of latitude is indicated, including 70°, 60°, and 50°, and, on the west coast, the 40th parallel is also shown by a line correctly placed, to the south of Cape Mendocino. It is, however, indicated in the margin as latitude "42." On the opposite or eastern side of the Map the line of latitude actually shown is latitude 42, and it is correctly so named. This peculiar mistake occurs both on the original and on the reproduction.

The text of the work to which it is an appendage explains the limits which the historian had placed himself under, and, at the same time, very clearly shows that he did not suppose the title of his work alone would render its scope clear to his readers. On the second page of the first volume, and in explaining the scope of his work, Mr. Bancroft writes: "The term north-west coast, as defined for the purposes of this history, includes the territory known in later times as Oregon, Washington, and British Columbia;" thus rendering it obvious that for convenience he embraced under that term certain parts of the west coast which subsequently shaped themselves into three distinct territorial divisions. As he had already treated of the history of California (vol.), this was excluded, and as he proposed to treat separately of Alaska (vol. xxxiii), this, also, was eliminated. As a matter of fact, however, he found it convenient to include in his Map a greater extent of the west coast than that above defined, to the north and south, as we have already seen he did not scruple to do to the east. His Map actually includes a considerable part both of the coast and the interior of Alaska in one direction, and of what is now the State of California in the other.

Notes on Maps examined, on which the term "North-west Coast of America" or its equivalent expressions are met with.

N.B.—These notes include all the Maps upon which the term has been found among those contained in the general note on Maps elsewhere printed.

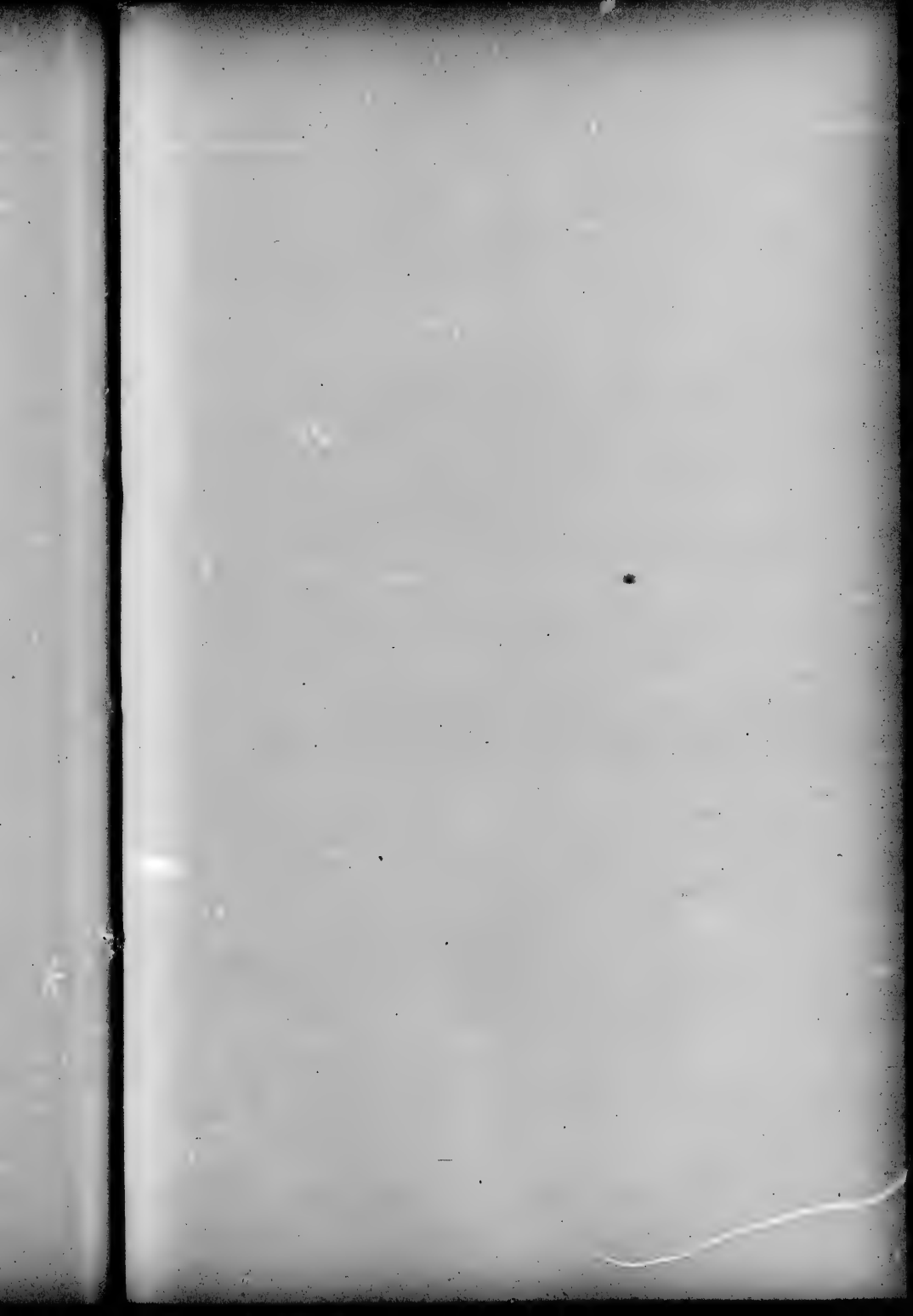
"Voyages from Asia to America, for completing the Discoveries of the North-west Coast of America." S. Müller. English edition. London, 1761.

This contains "A Map of the Discoveries made by the Russians on the North-west Coast of America."

Published by the Royal Academy of Sciences at St. Petersburg, and republished in London by Thos. Jefferys.

. This very early Map (though geographically very imperfect), and the title of the work in which it is contained, show the sense of probably the original use of the term "north-west coast," which there extends northward to Behring Straits.





"A new Map of the North-east Coast of Asia and North-west Coast of America, with the late Russian Discoveries." In the "London Magazine," 1764.

This is practically a reduction of the last, and has a similar bearing on the question of the north-west coast.

"Cook's Third Voyage." Original 4to. edition. London, 1784.

This contains a Chart entitled, "Chart of the N.W. Coast of America and the N.E. Coast of Asia," &c., which includes the American coast from the point near which Cook first reached it, about 44° latitude, continuing to the termination of his explorations at Icy Cape, on the Arctic Ocean, to the north of Behring Strait.

"Troisième Voyage de Cook." Paris, 1785.

Contains "Carte de la Côte N.O. de l'Amérique et de la Côte N.E. de l'Asie."

The name "North-west Coast" is not engraved on the land of the Map, but the Map extends for the whole length of Cook's exploration, or to Icy Cape, in the Arctic Ocean.

"A Voyage of Discovery to the North Pacific Ocean, &c." Vancouver. London, 1798.

Contains "A Chart showing part of the Coast of North-west America."

This Chart includes the coast continuously from latitude 30° to beyond Kadiak Island.

(According to title this does not include the whole north-west coast.)

"Map published by the Quartermaster-General's Department. Russia, 1802."

This shows, in Russian characters running on the mainland, "Part of the North-west Coast of America," extending from a point near the coast, and to the north of Behring Strait, continuously to a point between the 53rd and 54th degrees of latitude.

"Atlas para el Viage de las Goletas 'Sutil' y 'Mexicana.'" Madrid, 1802.

Charts 1 to 8, contained in this work, entitled "La Costa N.O. de America," include continuously from latitude 17° northward, and westward to Unalaska.

Burney. "A Chronological History of North-eastern Voyages of Discovery." London, 1819.

Chapter 19 is entitled "Captain Cook on the North-west Coast of America." This title is continued as a side-note to the pages throughout the chapter as far as p. 229, or from the point at which Cook first sighted the American coast, in latitude 44½°, to Unalaska, after which *west coast* is substituted for *north-west coast*. Burney was himself a member of Cook's expedition, and the use here made of the term shows clearly how he understood it to apply.

Rossi. "Atlas" Milan, 1820.

Map 6. The World, in hemispheres.

On this Map "Costa Nord-ouest" appears, the letters of this title extending from a little west of the head of

Cook's Inlet along the land southward to the 50th parallel.

Map 39. "Carte della Parte della Costa Nord-ouest dell'America." (Chiefly to show Vancouver's recent surveys.)

On the Map the words "Parte della Costa Nord-ouest dell'America" extends along the land from the longitude of Kadiak southward to latitude 39°.

The part of the coast actually included in the Map extends from latitude 30° northward and westward continuously to a point beyond Kadiak Island.

"Journal d'un Voyage autour du Monde, 1816-19." Roquefeuil. Paris, 1823.

Contains "Carte de la Côte Nord-ouest d'Amérique."

This Map, relating specially to the north-west coast, includes the coast continuously from latitude 34° 30' to Kadiak Island and the adjacent mainland coast to the west of that island.

"Carte de la Côte de l'Amérique, par M. Duflet de Morfas." 1844.

On this Map "Côte Nord-ouest de l'Amérique" is engraved, running to seaward of that part of the coast from about 60° to the Strait of Fuca.

"North-west Coast of America. United States' Coast Survey. Benjamin Peirce, Superintendent. 1868."

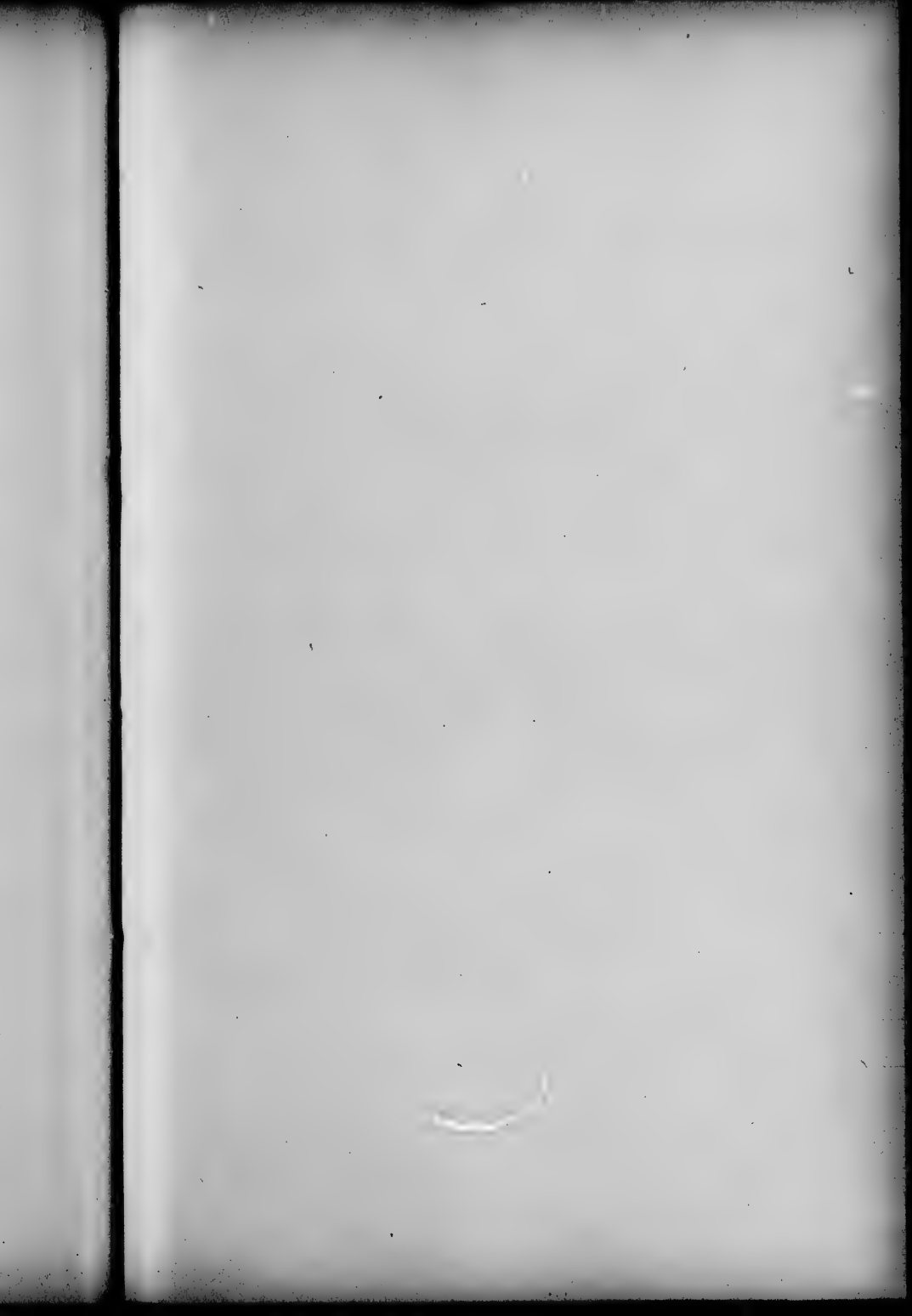
Sheets 1 to 3. These include the coast continuously from the vicinity of the Strait of Fuca (sheet 1) to some distance west of Kadiak and Seven Islands (sheet 3), ending to the westward between the 157th and 158th meridians, and showing the eastern part of Bristol Bay.

In the "United States' Pacific Coast Pilot." Alaska, Part I. 1883. Page 237.

"List of Charts issued by the United States' Coast and Geodetic Survey," &c.

Under the title of "Sailing Charts, North-west Coast of America," is found "No. 4. Chirikoff Island to Nunivak." This particular Chart is entered as "in preparation," but its title carries the term "north-west coast" up to or beyond latitude 60°, within Behring Sea.





III.

Memorandum on the Maps which are referred to in the "Correspondence respecting the Russian Ukase of 1821." (Confidential Foreign Office Print, June 1892.)

(Note.—It is not considered advisable to produce the whole of this correspondence at the present time, as parts of it refer to the question of land boundary of Russian and British territory, which question is reserved for further consideration.)

It has been endeavoured to look up all the Maps alluded to in the course of the correspondence, and which may, therefore, be supposed to have been those referred to by the negotiators, with the following results:—

(a.) Page 5 of print. Map inclosed by Sir C. Bagot in despatch from St. Petersburg dated the 17th November, 1821. Sir C. Bagot writes:—

"I have the honour to transmit to your Lordship, under separate cover, an English translation of the Ukase, and I at the same time inclose a Map of the north-west coast of America and the Aleutian and Kurile Islands, which has been published in the Quartermaster-General's Department here, and upon which I have marked all the principal Russian Settlements."

Of this Map, dated 1802, the original copy exists in the Foreign Office. For particulars respecting it, see notes on Maps generally, and notes on north-west coast.

(b.) Page 41. Sir C. Bagot to Mr. G. Canning, writes from St. Petersburg, under date the 19th August, 1823, referring particularly to the position of Sitka:—

"Sitka is not laid down very precisely in the Map published in 1802 by the Quartermaster-General's Department here, or laid down at all in that of Arrowsmith, which has been furnished to me from the Foreign Office."

The first Map is that above noted in para. (a).

The second must either have been Arrowsmith's *Map of America*, 1822, or Arrowsmith's *Chart of the Pacific Ocean*. The latter is a large Map in nine sheets, which ran through various editions from 1798 to 1844. On the edition of 1832 (in British Museum Library), the years

antecedent in which corrected editions were published are noted, and one of these years is 1822.

This particular edition has not been found, but for all purposes connected with the present discussion, the editions of 1810 and 1822 (both in British Museum) are identical.

Behring Sea appears without name on both this and the Map of North America, and "north-west coast" is not found on either.

(c.) Page 48. Sir C. Bagot to Mr. G. Canning, writes from St. Petersburg, under date the 17th October, 1823. He refers to a proposed line of boundary on the American Continent, and speaks, in this connection, of the "head of Lynn Canal, as it is laid down in Arrowsmith's last Map." The Map spoken of is evidently the same with that noted in para. (c).

(d.) Page 48. In a Memorandum on the Russian and English boundary on the north-west coast of America, dated the 13th January, 1824, it is said:—

"Mr. Canning will perceive by the inclosed Russian Chart (copied from Vancouver's survey) that the Russian Settlement of *Sitka* is on a small island so named in the mouth of Norfolk Sound," &c.

The reference is here entirely to the position of *Sitka*. The original Map transmitted with the Memorandum cannot be found in the Foreign Office. It may have been the Russian Map of 1802, but this is doubtful.

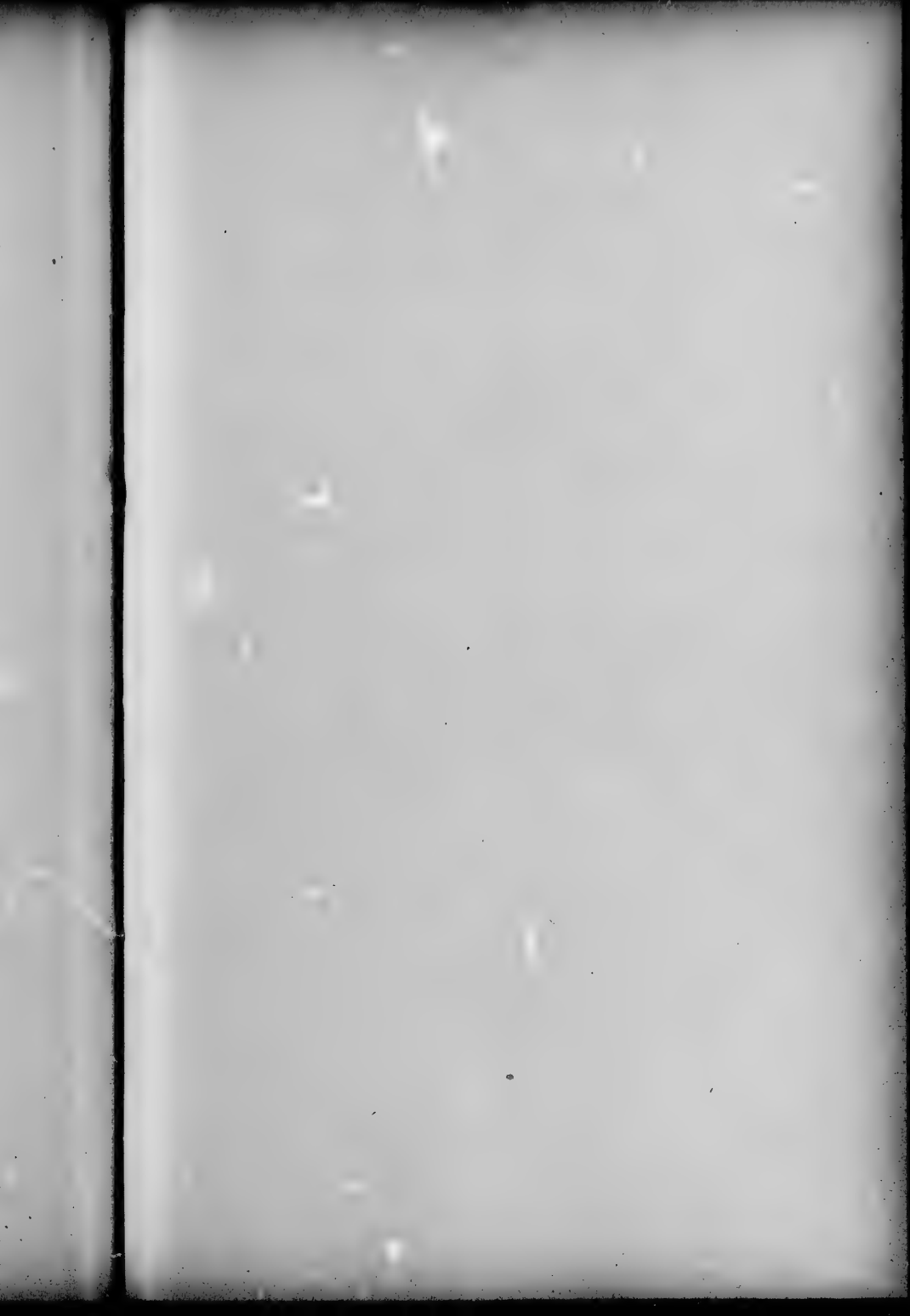
(e.) Page 49. Admiralty to Foreign Office, 14th January, 1824. Sir John Barrow writes:—

"I think the inclosed sketch (which may be considered as correct with respect to latitudes and longitudes) may be of service to Sir Charles Bagot in the negotiations."

The MS. sketch referred to has been obtained from the Embassy at St. Petersburg. It shows a small part of the north-west coast, and the position of *Sitka* and some projected land lines.

(f.) Mr. G. Canning, writing to Sir C. Bagot under date of the 15th January, 1824, again refers to the position of *Sitka*, stating that the Russian Map of 1802 (incorrectly printed 1822) showed it to be situated on a small island, and not on the mainland, as a Map inclosed by Sir C. Bagot had shown it to be.





The first Map is evidently again that referred to in paragraph (a); the second has not been found, and is not so described that it can be recognized.

(g.) Page . In a letter from Mr. Pelly, Governor of the Hudson's Bay Company, to Mr. G. Canning, under date of the 16th January, 1824, a doubt is expressed as to whether Mr. Faden's Map (to which Mr. Canning appears to have referred in conversation as being the most authentic) could safely be relied on in respect to the question of boundary.

This Map is not described, and has not been identified as yet. It might be looked for in the Royal Geographical Society's Map-room under North America, or America, or Pacific Ocean.

From the above it would appear that the two Maps principally referred to in the course of the negotiations, so far as indicated by the correspondence, were the Russian Map of 1802 and "Arrowsmith's Map," the latter being either that of the *Pacific Ocean* or that of *America*. These two Maps, English and Russian respectively, are, in fact, the only ones mentioned in connection with the general questions raised by the Ukase of 1821.

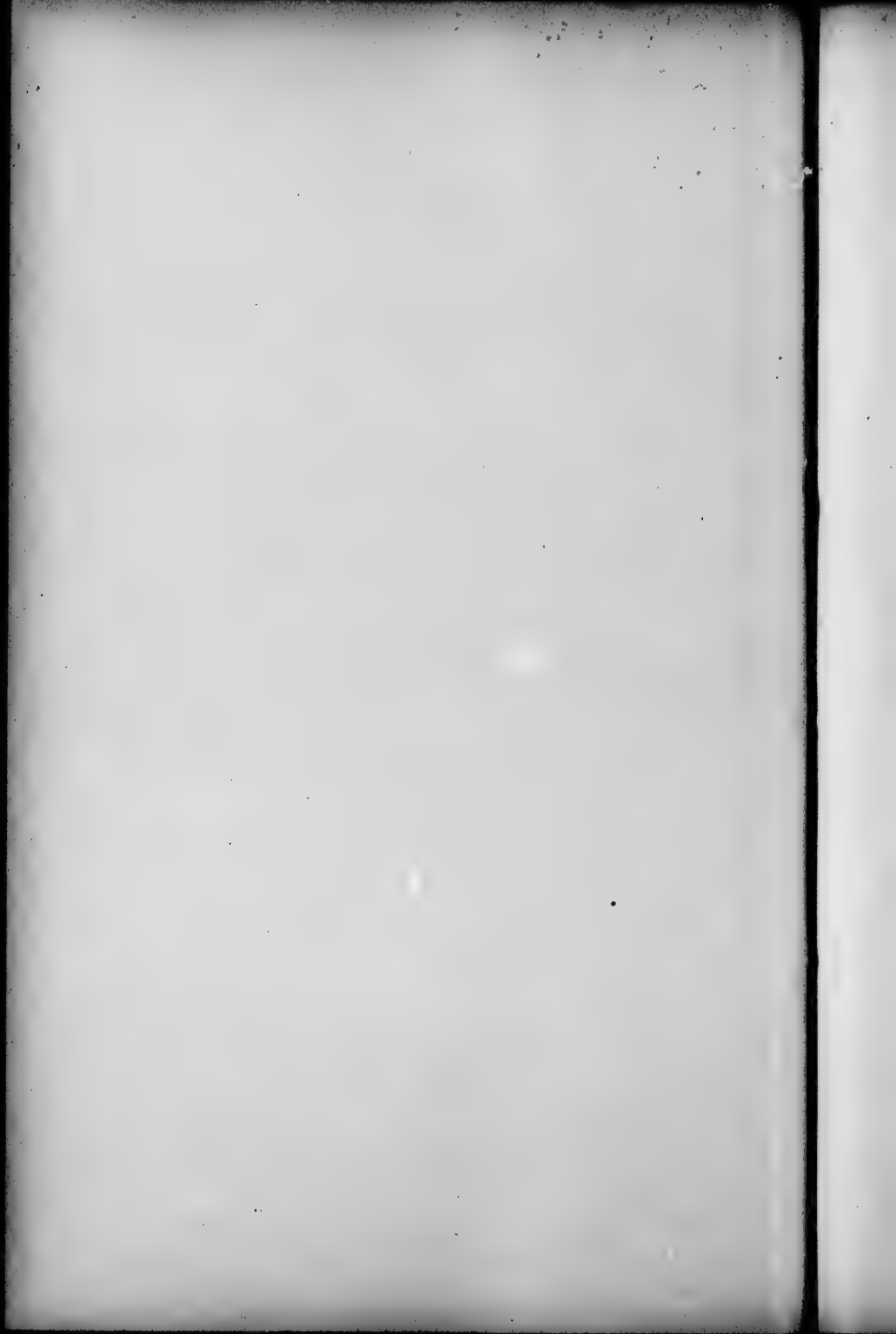
IV.

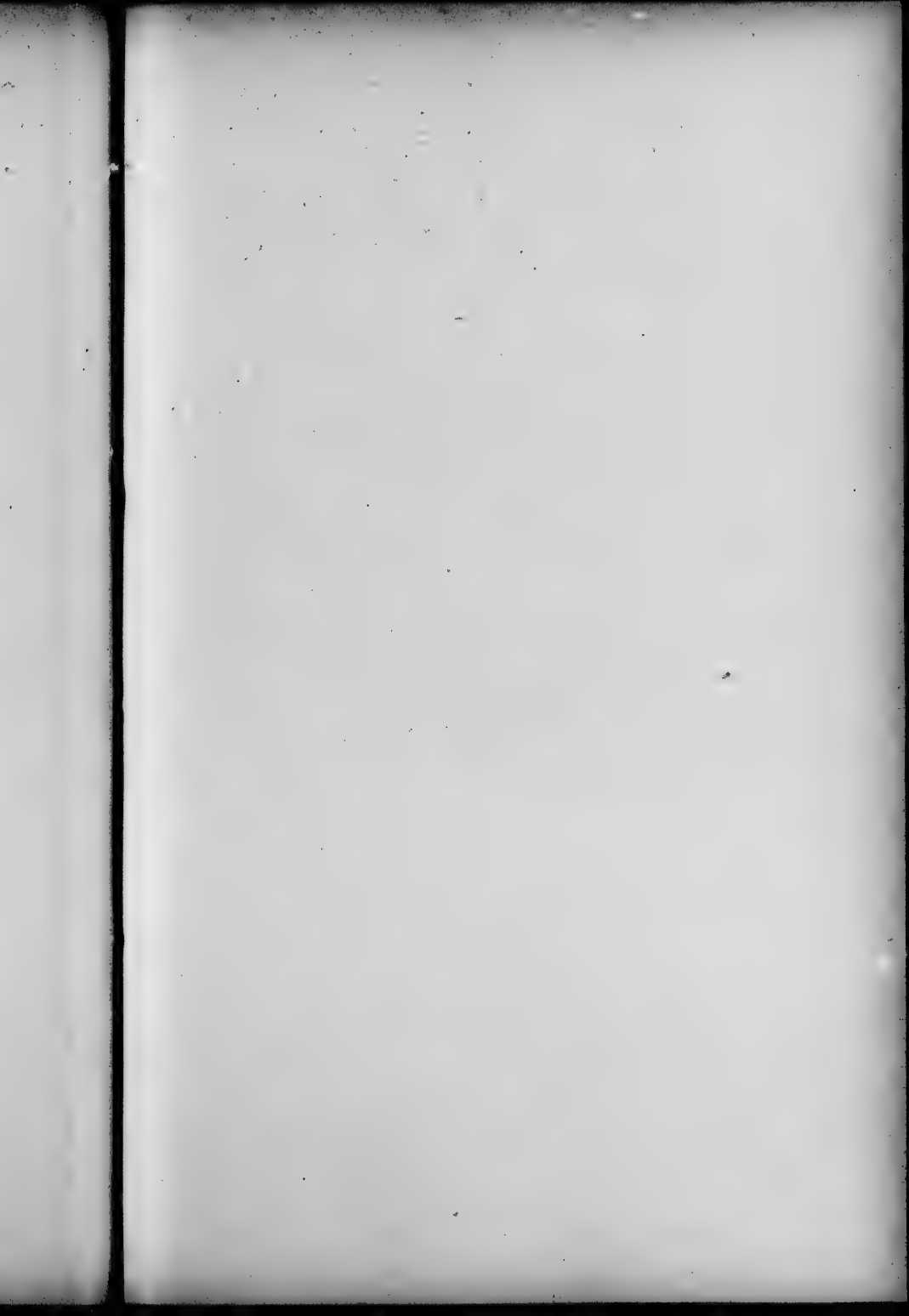
List of Maps cited by Mr. Blaine, and forming "Inclosure B" to his Letter of December 17, 1890.

LIST of Maps, with Designation of Waters now known as the Behring Sea, with Date and Place of Publication.

[In these Maps the waters south of Behring Sea are variously designated as the Pacific Ocean, Océan Pacifique, Stilles Meer; the Great Ocean, Grande Mer, Grosse Ocean; the Great South Sea, Grosse Sud See, Mer du Sud. And they are again further divided, and the northern part designated as North Pacific Ocean, Partie du Nord de la Mer du Sud, Partie du Nord de la Grande Mer, Grand Océan Boréal, Nördlicher Theil des Grossen Sud Meers, Nördlicher Theil des Stillen Meers, Nördliche Stille Meere, &c. In all the Maps, however, the Pacific Ocean, under one of these various titles, is designated separate from the sea.]

Name of Maps, &c.	Name of Sea.	Place of Publication.	Date.
Accurate Carte von Nord Amerika, from the best sources	Sea of Anadir .. ..	.. ..	Unknown.
Map made under direction of Michael Gvozdef, Surveyor of the Shostakof Expedition in 1730	Kantschatskisches Meer ..	St. Petersburg ..	1743
Mappemonde, by Lowitz	Mare Andricum	Berlin	1746
Geographical Atlas of the Russian Empire, Alexander Vostokhin	Kantschatska or Beaver Sea	St. Petersburg ..	1748
Carte de l'Isle de Iseo, corrected to date, by Philippe Busche, Academy of Sciences, and Geographer to the King	Mer de Kantschatska	Paris	1754
Müller's Map of the Discoveries by the Russians on the North-West Coast of America, prepared for the Imperial Academy of Sciences	Sea of Kantschatska	St. Petersburg ..	1758
D'Auvilles Map of the Western Hemisphere ..	Sea of Anadir	Paris	1761
Map of Hémi-sphère Septentrionale, by Count Rodera, published by the Royal Academy of Sciences	Mer Dormante	Berlin	1762
Map published in the "London Magazine" ..	Sea of Kantschatska	London	1764
Map by S. Bellin, Engineer of the Royal Academy	"	"	1766
Nouvelle Carte des Découvertes par les Vais-seaux Russes aux Côtes inconnues de l'Amérique Septentrionale; Müller	Mer de Kantschatska and Mer d'Anadir	Amsterdam ..	1766
Jeffery's American Atlas, printed by R. Sayers and J. Bennett	Sea of Kantschatska and Sea of Anadir	London	1768-72
Road Map from Paris to Tobolsk	Sea of Kantschatska	Paris	1769
Bowie's Atlas; Map of the World	Sea of Anadir	London	1770
Map of the Eastern part of the Russian Territory, by J. Truscott	Mare Kantschatskiense ..	St. Petersburg ..	1771
Map of the New Northern Archipelago, in J. von Stachlitz-Storckburg's Account of the Northern Archipelago, lately discovered by the Russians in the Seas of Kantschatska and Anadir	Sea of Kantschatska and Sea of Anadir	London	1774
Samuel Dunn's Map of North America	Sea of Anadir	"	1774
Chart of Russian Discoveries, from the Map published by the Imperial Academy of St. Petersburg (Robert Sayer, print-seller), published as the Act directs	Sea of Kantschatska	"	1775
Jeffery's Atlas; Chart containing part of Icy Sea and adjacent Coasts of Asia and America; published in 1775, according to Act of Parliament, by Sayer and Bennett	"	"	1776
Jeffery's Atlas; Chart of the Russian Discoveries, from Map published by Imperial Academy of Sciences; published by Robert Sayer, March 2, 1775	"	"	1776
Atlas, Thomas Jeffery's (Geographer to King), American; Chart containing the Coasts of California, New Albion, and the Russian discoveries to the North	"	"	1776
Map in the French Encyclopedia	"	Paris	1777
Schmidt's Atlas	"	"	1777
Jeffery's Atlas	"	London	1778
Carte der Entdeckung zwischen Sibirien und Amerika to the year 1780	Kantschatskische Meer	"	1780
Map of the New Discoveries in the Eastern Ocean	Kantschatska or Beaver Sea	St. Petersburg ..	1781
St. Petersburg Atlas	Sea of Kantschatska	"	1782
Halbkugel der Erde, by Bode	Kantschatska Sea	Berlin	1783
Chart of the North-West Coast of America and the North-East Coast of Asia, prepared by Lieutenant Henry Roberts, under the immediate inspection of Captain Cook; published by William Faden	Sea of Kantschatska	London	1784
Map of the Empire of Russia and Tartary, by F. L. Gulascfeld	Kantschatskische oder Riber Meer	Nuremberg ..	1788
Map of Discoveries made by the Russians and by Captain Cook; Alexandre Vilbrech	Sea of Kantschatska	St. Petersburg ..	1787
Dunn's Atlas; Map of the World	"	London	1788

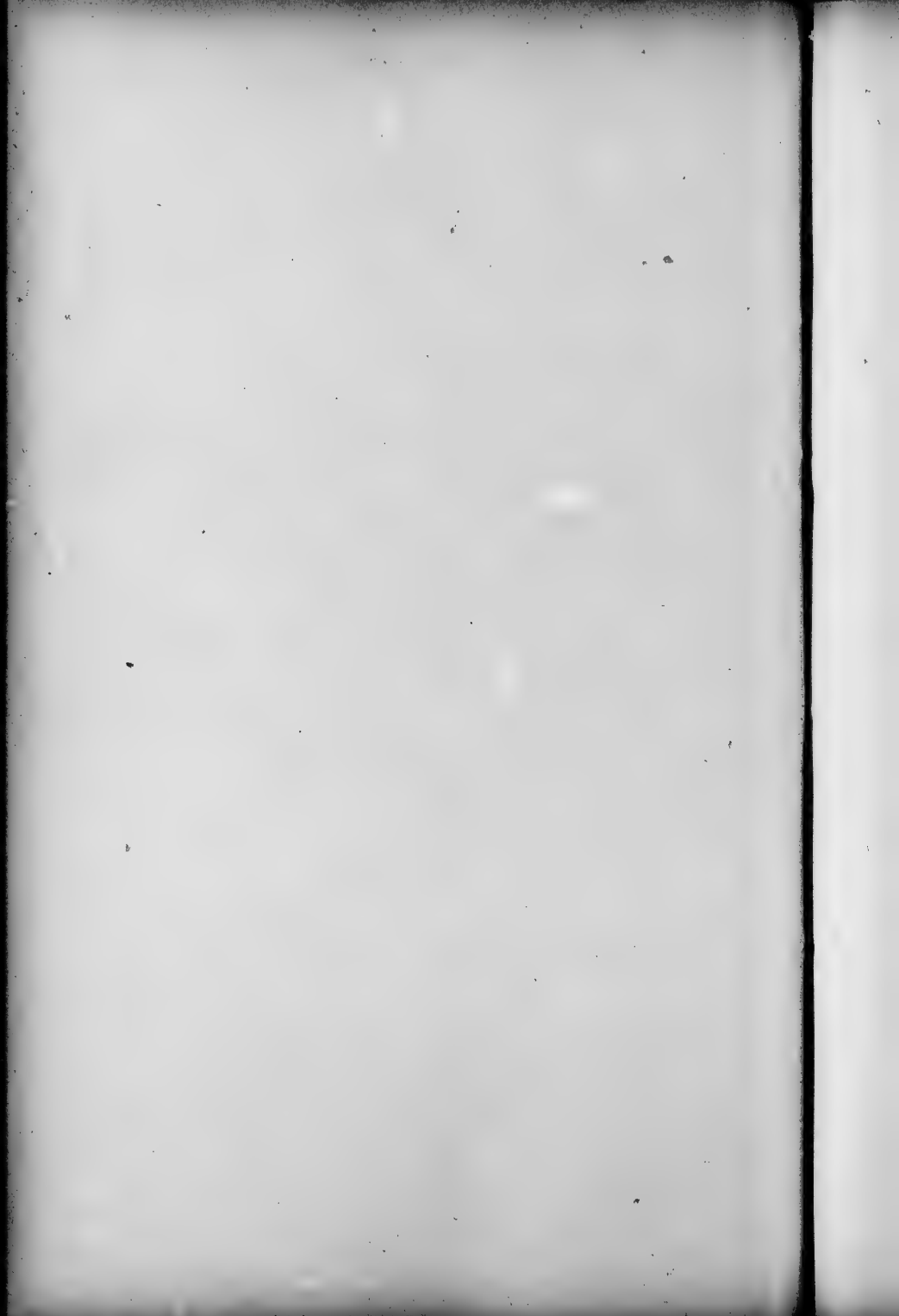


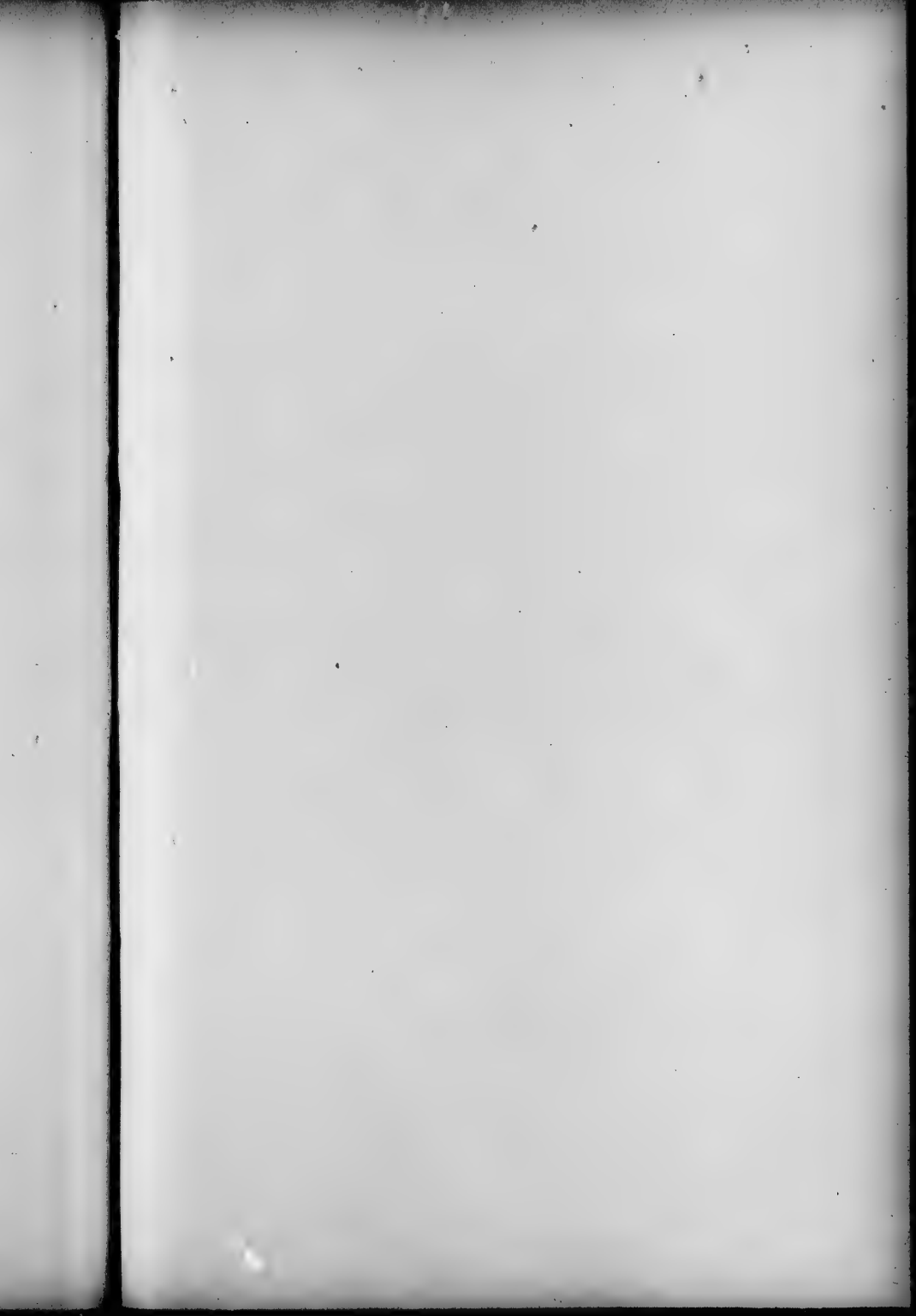


Name of Maps, &c.	Name of Sea.	Place of Publication.	Date.
D'Auville's Atlas; Map of the World, with improvements; prepared for J. Harrison, as the Act directs	Sea of Kamtschatka	London	1785
Mearns' Voyages; Chart of North-West Coast of America	" "	" " " "	1790
Chart of the World, exhibiting all the new Discoveries to the present time, with the tracks of the most distinguished Navigators from the year 1700, carefully collected from the best Charts, Maps, Voyages, &c., extant, by A. Arrowsmith, Geographer, as the Act directs	" "	" " " "	1790
Chart of the Great Ocean, or South Sea, conformable to the account of the voyage of discovery of the French frigates "La Boussole" and "L'Astrolabe"; La Pérouse	" "	Paris	1791
Karte des Nordens von Amerika; G. Forster ..	Kamtschatka Sea	Berlin	1791
Greenough's Map in Wilkinson's Atlas ..	Sea of Kamtschatka	London	1791
Map of the North-Eastern part of Siberia, the Frozen Sea, the Eastern Ocean, and North-Western Coasts of America, indicating Billings' expedition	Kamtschatka Sea	St. Petersburg ..	1791
Arrowsmith's Map of the World	Sea of Kamtschatka	London	1794
Charte von Amoen und F. L. Gulsefeld ..	Kamtschatkisches Meer	Nürnberg	1796
Atlas of Mathew Carey; Map of the World from the best authorities, and Map of Russian Empire in Europe and Asia	Sea of Kamtschatka	Philadelphia ..	1796
Chart of North America, by J. Wilkes, "as Act directs"	" "	London	1796
Halbkugel der Erde	Kamtschatka Sea	Nürnberg	1797
Chart von Nord Amerika, by F. L. Gulsefeld ..	Kamtschatkisches Meer	Nürnberg	1797
C. F. Delmarche's Atlas; Mappemonde, by Robert du Vaugondy, including new Discoveries of Captain Cook	Sea of Kamtschatka	Paris	1797
La Pérouse's Chart of the Great Ocean, or South Sea, conformable to the Discoveries of the French frigates "La Boussole" and "L'Astrolabe," published in conformity with the Decree of the French National Assembly, 1791, translated and printed by J. Johnson	" "	London	1798
W. Heather's Marine Atlas	" "	Edinburgh	1799
Greenough's Atlas; Map by Vibrecht, entitled "Carte de la Côte Nord-Ouest de l'Amérique Septentrionale," and showing the Discoveries of the Russians and Fortwick and Dickson	Mer de Kamtschatka	Edinburgh	1800
Wilkinson's General Atlas; a new Mercator's Chart drawn from the latest discoveries	Sea of Kamtschatka	London	1800
Map of the World; Graberg	Bacino di Behring	Geneva	1802
Map Magazine, composed according to the latest observations of foreign Navigators, corrected to 1802	Beaver Sea or Sea of Kamtschatka	St. Petersburg ..	1802
Map of Meer von Kamtschatka, with the Routes of Captain Jos. Billings and Mart. Sauer, drawn by Fred. Gotze, to accompany Report of Billings' Russian Official Visit to Aleutia and Alaska	Meer von Kamtschatka	Weimar	1803
Atlas des Ganzen Erdkreises, by Christian Gottlieb Reichard	" "	" " " "	1803
Arrowsmith's General Atlas	Sea of Kamtschatka	London	1804
Map of Savrilla Sarytscheff's Journey in the North-East Sea	" "	Leipzig	1805
Jedediah Morse's Map of North America ..	" "	Boston	1805
Robert Wilkinson's General Atlas; new Mercator's Chart	" "	London	1807
Atlas of the Russian Empire, adopted by the General Director of Schools	Kamtschatka or Beaver Sea	St. Petersburg ..	1807
General Map of the Travels of Captain Golovnin	Kamtschatka Sea	" " " "	1807-9
Map in Carey's Atlas	Sea of Kamtschatka	London	1808
Lieutenant Roberts' Chart, improved to date ..	" "	" " " "	1808
Mappemonde in Atlas of Melte-Brun	Bassin de Behring	Paris	1809
Dunn's Atlas	Sea of Kamtschatka	London	1810
Karte des Grossen Oceans, usually the South Sea; Sotsmann	Kamtschatkisches Meer	Hamburg	1810
Chart von Amerika; Streits	Sea of Kamtschatka	Weimar	1810
Arrowsmith's Map of North America	" "	London	1811
Map of the World in Pinkerton's Atlas	" "	" " " "	1812
Map by Lapie	Bassin du Nord	Paris	1812
"Carte d'Amérique, rédigée d'après celle d'Arrowsmith, en quatre planches et soumise aux Observations Astronomiques de M. de Humboldt;" by Champion	Bassin de Behring	" " " "	1813
Map of Oceania, or the Fifth Part of the World, including a portion of America and the Coasts of Asia, by H. Brad	Bassin du Nord ..	" " " "	1814
Neele's General Atlas; Samuel and George Neele	Sea of Kamtschatka	London	1814
Chart von Amerika; Geographic Institute ..	Meer von Kamtschatka	Weimar	1814
Map of the World, by Von Krusenstern	" "	St. Petersburg ..	1815

* This Chart also designates the coast from Columbia River (49°) to Cape Elizabeth (60°) as the "Nord-West Kuste."

Name of Map, &c.	Name of Sea.	Place of Publication.	Date.
Encyprotype de l'Amérique Septentrionale, by Brûé	Bassin du Nord	Paris	1815
Smith's General Atlas	Sea of Kamtschatka	London	1815
Allgemeinewelt Chart, with Voyage of Krusenstern	"	"	1815
Grand Atlas Universel, edited by Chas Deshay	Bassin du Nord	Paris	1816
Mappemonde, by Goujon, Geographer	Bassin du Nord ou de Behring	"	1816
Atlas Élémentaire, by Lapie et Poisson	Mer de Behring ou Bassin du Nord	"	1817
Amérique Septentrionale et Méridionale; Lapie	Sea of Kamtschatka	Edinburgh.	1817
Map in Thompson's Atlas	"	Baltimore	1817
Fielding Lucas' Atlas	"	Weimar	1818
Reichard and Von Haller's German Atlas	"	Edinburgh.	1818
Map in Greenough's Atlas	"	Philadelphia	1818
John Pinkerton's Modern Atlas	"	Edinburgh.	1819
Map engraved by Kirkwood and Sons	"	London	1819
Chart of the Russian and English Discoveries in the North Pacific Ocean, by Captain James Burney, F.R.S.	"	"	1819
Carte Générale de l'Amérique; De Lamarque	Mer de Behring ou Bassin du Nord	Paris	1819
Carte de l'Amérique Septentrionale et Méridionale; Hannon	Bassin du Nord.	"	1820
Chart of Alaska, by J. K. Eyries and Malte-Brun	Behring Sea	"	1821
Chart of the Arctic Ocean and North America, by Lapie	"	Weimar	1821
Carte Générale du Globe; Brûé	Mer de Behring	Paris	1821
Mappemonde; Tardieu	"	"	1821
Atlas of La Voque; M. Carey	Sea of Kamtschatka	Philadelphia	1821
Atlas Universel of A. H. Brûé	Mer de Behring	Paris	1822
Mappemonde; Horison	"	"	1823
Map to illustrate the Voyage of Kotzebue	Sea of Kamtschatka	St. Petersburg	1823
Fielding Lucas' Atlas	"	Philadelphia	1823
Amérique Septentrionale; Lapie	Mer de Behring	Baltimore	1823
Atlas Classique et Universel, by M. Lapie	Mer de Behring ou Bassin du Nord	Paris	1824
Anthony Finlay's Atlas	Sea of Kamtschatka	Philadelphia	1824
Atlas of Buchon; Cartes des Possessions Russes	Bassin du Nord.	Paris	1825
Map in Butler's Atlas	Sea of Kamtschatka	London	1825
Atlas Historique de la Sage	Mer de Behring	Paris	1829





V.

Notes on various Maps examined in connection with the question of Usage of the names "Pacific Ocean," "Behring Sea," &c.

These notes embody the result of the examination of all the Maps upon which the sea now called Behring Sea appears prominently, between about 1815 and 1825 (both inclusive), which could be found in the Map Department of the British Museum Library; also some which appear in books of travels, &c., in the Printed Book Department.

For years previous to 1815, and subsequent to 1825, a selection only of the more important Maps have been consulted. Such selection was made by reference to the Catalogue titles of the Maps, and the results of the examination of each such Map are here noted, irrespective of the bearing which these may be supposed to have on the main question. The list as a whole, therefore, differs from that given as an Appendix to Mr. Blaine's despatch of the 17th December, 1890 (which was compiled for the purpose of making out a specified contention), and, so far as it goes, may be accepted as a general indication of the best usage in vogue at and about the time of the Conventions of 1824 and 1825. The names printed in *italic* are in each case exact transcripts of those appearing on the Map.

To facilitate further reference, the Catalogue numbers of all the Maps obtained in the Map Department are given. Those contained in books may be referred to by the titles of the books.

No Maps of a date earlier than that of the publication of Cook's third voyage, in 1784, have been included in the list; but all Maps relating to Cook's voyage, and which include the area of Behring Sea, have been sought for, as Mr. Blaine, in his despatch above cited, appears to place special importance on one of them. This particular Map, published by William Faden, has not been found; but none of the original or official Maps relating to Cook's expedition agree with Mr. Blaine's description of this Map in naming Behring Sea (as Sea of Kamtohatka or otherwise) as separate from the North Pacific. On the contrary, in none of these Maps, whether in

the English editions or in the French or German editions, of Cook's voyages give any distinctive name to Behring Sea as a whole. The only Map relating to Cook's expedition upon which such separate name has so far been found is one taken from "Guthrie's Atlas" (No. 973 (5)), in which Behring Sea is named *Sea of Kamtschatka*. This is without date, but the "assigned date" in the Catalogue of the British Museum Library is 1811.

"A General Chart, exhibiting the Discoveries made by Captain James Cook, &c. By Lieutenant Henry Roberts, of His Majesty's Royal Navy. In Cook's "Third Voyage," 4to. edition. London, 1784. Folio volume of Maps and Plates accompanying text.

This is the original of the Chart in the 8vo. ed. Behring Sea appears without names, though *Okutarskoi Sea*, *Beaver Sea*, *Gulf of Anadir*, *Shoal Water*, *Bristol Bay*, appear as local names of equal rank. The three first close in to the Asiatic coast.

Behring's Strait. North Pacific Ocean.

"Chart of the N.W. Coast of America and the N.E. Coast of Asia." In same original 4to. edition.

Behring Sea without name, though occupying a central position, and shown in detail.

Bristol Bay is the most prominent name on the whole of this part of the Chart.

Anadirsk Guba, appears in small letters in the gulf itself. Other names appearing in the General Map are here wanting.

Bherings Strait. No name included on part of North Pacific included.

S. 1, Box 12.

"A General Chart, exhibiting Discoveries made by Cook," by Lieutenant Roberts, 1784.

Behring Sea without general names. *Beaver Sea* and *Okutarskoi Sea*, engraved close in to shore of Kamtschatka. *Gulf of Anadir* and *Bristol Bay* prominently named.

Behring's Straits. North Pacific Ocean.

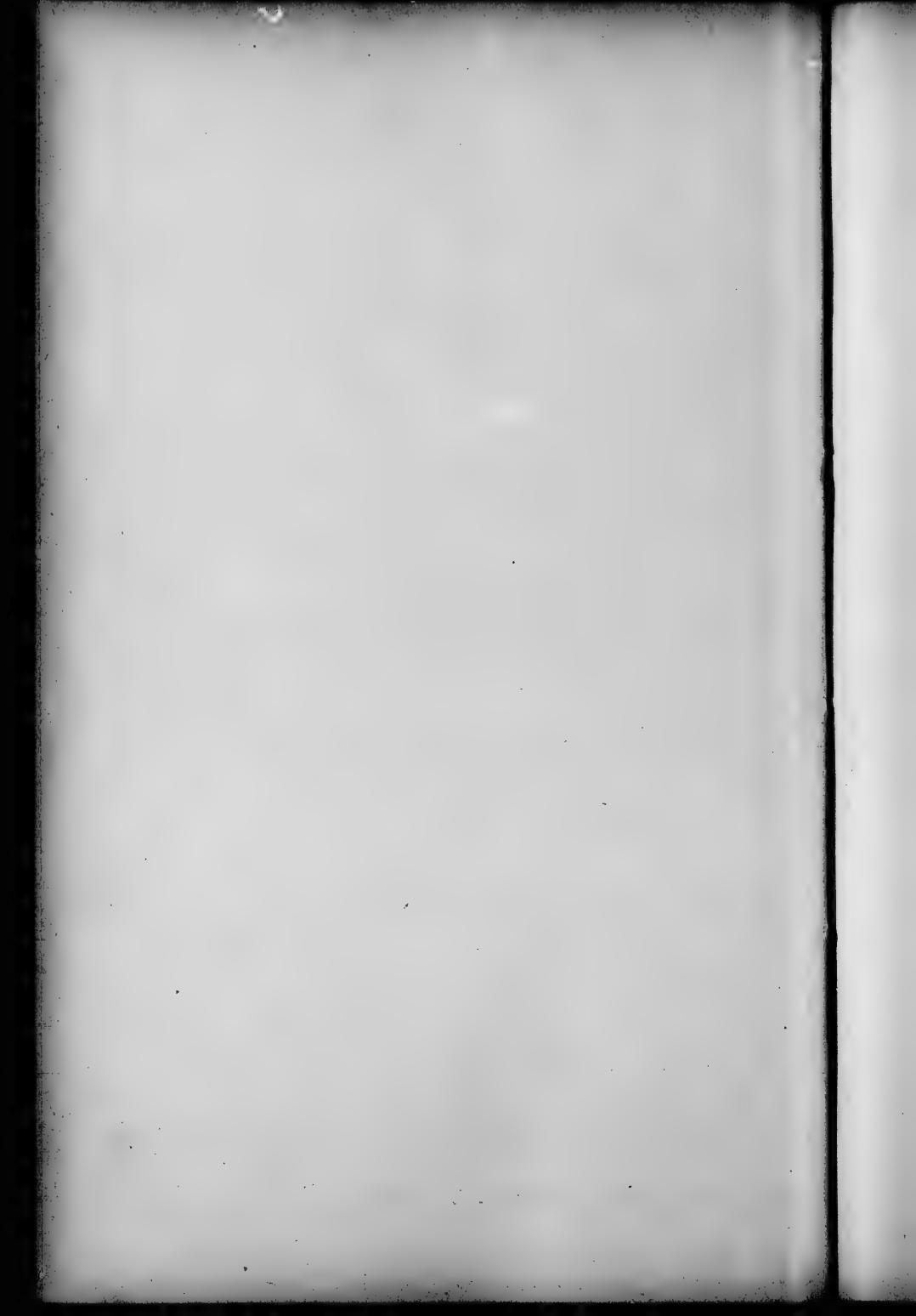
"A General Chart, exhibiting the Discoveries made by Captain James Cook, &c." In "A Voyage to the Pacific Ocean, &c.; Cook" 27 vols. 8vo. London, 1784.

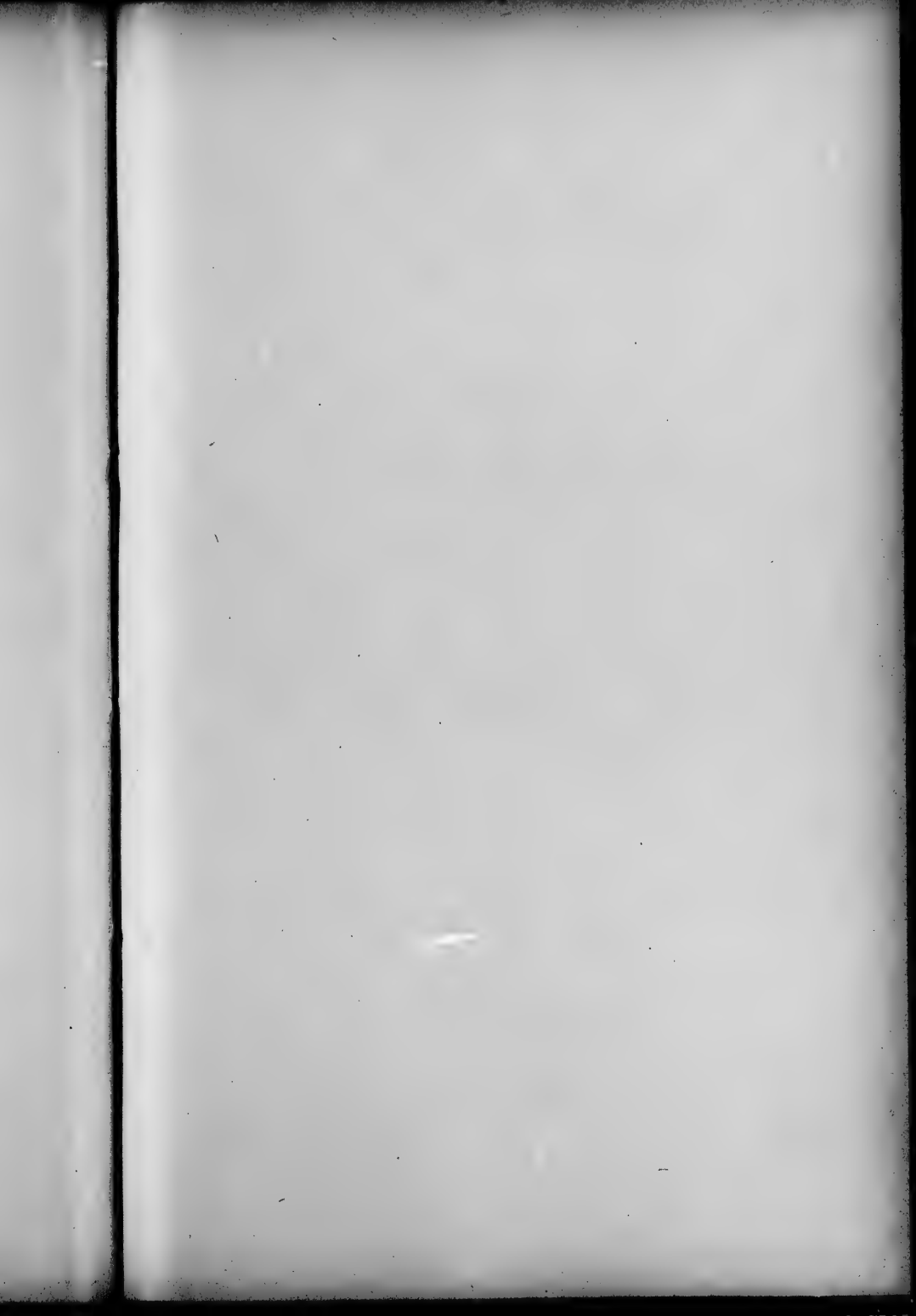
The Chart included in the British Museum copy of this work appears to have been inserted, and bears date on margin as engraved for 8vo. edition in 1786. Roberts' name is not here given as authority.

Behring Sea without name.

Behring's Str. North Pacific Ocean.

(On this edition of Map, *Okutarskoi Sea*, *Gulf of Anadir*, *Shoal Water*, *Bristol Bay*, appear as local names of equal rank, but "Beaver Sea," shown on some other Maps of "Cook's Voyages," is omitted.)





"A General Chart, exhibiting the Discoveries made by Captain James Cook," &c. In Cook's "Third Voyage," 2nd edition. London, 1785. 4to.

This seems to be identical with that in the first edition. Behring Sea appears without name. Subsidiary names in Behring Sea, &c., same as in 1st edition.

"Chart of the N.W. Coast of America and N.E. Coast of Asia." In "Cook's Voyage," 2nd edition.

Identical with corresponding Map in 1st edition.

"Carte Générale offrant les Découvertes, &c., par A. Roberts, &c." In "Troisième Voyage de Cook." Paris, 1785. 4to.

Behring Sea appears, but without name, though various parts named, as follows: *M. Beaver*, *M. Olutarski*, *Golfe d'Anadir*, *Bas Fonds*, *Baye Bristol*. These are all engraved in characters of equivalent size and style.

Det. de Behrings. Ocean Pacifique du Nord.

"A General Chart exhibiting Discoveries made by Captain Cook, &c." Same Map as last. Another edition. From the "Political Magazine," December 1784 and January 1785. Nomenclature same as above. S. 1, Box 19.

"Carte de la Côte N.O. de l'Amérique, et de la Côte N.E. de l'Asie." In "Troisième Voyage de Cook." Paris, 1785. 4to.

Behring Sea occupies a central position, but without name.

Détroit de Behring. No name on that part of Pacific to south of Aleutian Islands which is included.

General Charts, &c., in Cook's "Dritte Reise." 2 vols. 4to. Berlin, 1788.

Behring Sea without name.

Beaver See, *Olutarsische See*, *Meerbusen von Anadir*, appear as subsidiary names close to Asiatic coast.

Seicht Wasser, *Bristol Bay*, similarly on American coast.

Behrings Strasse. *Das Nordliche Stille Welt Meer.*

"Charte von de Nord-Westlichen Küste von America und der Nord-Östlichen Küste von Asien," in Cook's "Dritte Reise."

Behring Sea all included, but without name.

Berings Strasse. *Meer von Ochotok* partly shown, and prominently named.

No name on part of Pacific included south of Aleutian Islands.

"Chart of the Pacific Ocean north of the Line." Laurie 7195, 2 (1). and Whittle. London, 1799.

Behring Sea named *Sea of Kamtschatka*.

North Pacific Ocean appears.

"Hydrographie Française. Mappemonde ou Carte S. 13 (11), 1. Réduite des Parties Connues du Globe, pour servir au Voyage de La Pérouse, 1785-88." No date. Probably S. 13 (10), 1.

about 1798 or before, as Vancouver's surveys not included. From "Atlas du Voyage." La Pérouse. No. 1.

Behring Sea not named, though *Mer d'Ochotsk*, &c., named.

Behring Strait named *Det. de Behring*.

Pacific Ocean named *Grand Ocean*.

5. 18 (11), 2.

"*Hydrographie Française. Carte des Côtes de L'Amérique et de L'Asie*." (From discoveries by French frigates "Boussole" and "Astrolabe." No date. Probably about 1798 or before, as Vancouver's surveys not included. From "Atlas du Voyage." La Pérouse. No. 15.)

Behring Sea not named on this large-scale Chart.

Behring Strait named *Det. de Behring*.

North Pacific named *Grand Ocean Septentrional*.

Map showing "The Russian Empire" in view of the Russian Empire. Took. London, 1800. 3 vols. 8vo.

Whole of Behring Sea included, but without separate name; on the contrary, the North Pacific is named as a whole *Eastern Ocean*, the first word lying to the north, the second to the south, of the Aleutian Islands. (*Eastern Ocean* is used in the same general sense in the text.)

Sea of Okhotsk distinctly named.

Behring's Straits.

"Map published by the Quartermaster-General's Department." Russia, 1802.

This is really a Chart showing the Asiatic and American coasts and the whole of Behring Sea.

The copy in Foreign Office is the identical one sent by Sir C. Bagot, 17th November, 1821, in his despatch of that date, and with his MS. notes upon it.

Behring Sea is named, in large letters running from west to east, *Beaver Sea*.

Kamtschatka Sea, in smaller letters, runs parallel to coast of peninsula of same name, and inside the Commander Islands.

North Pacific is named *Southern Ocean or Still Sea*.

Behring Strait is so named.

"Chart of the Strait between Asia and America with the Coast of the Tchutski." Drawn by A. Arrowsmith.

This Map appears in an account of a geographical and astronomical expedition to the northern part of Russia (expedition of Billings for the Russian Government), by Sauer. London, 1802.

This is practically a Chart of Behring Sea, but that sea is not separately named in any way.

Sea of Ochotsk appears prominently. *Sea of Anadyr* in bay of that name.

69810 (15).

"General Map of North and South America." A. Arrowsmith. London, 1804.

All eastern part of Behring Sea included as far west as Behring Island, but without name.

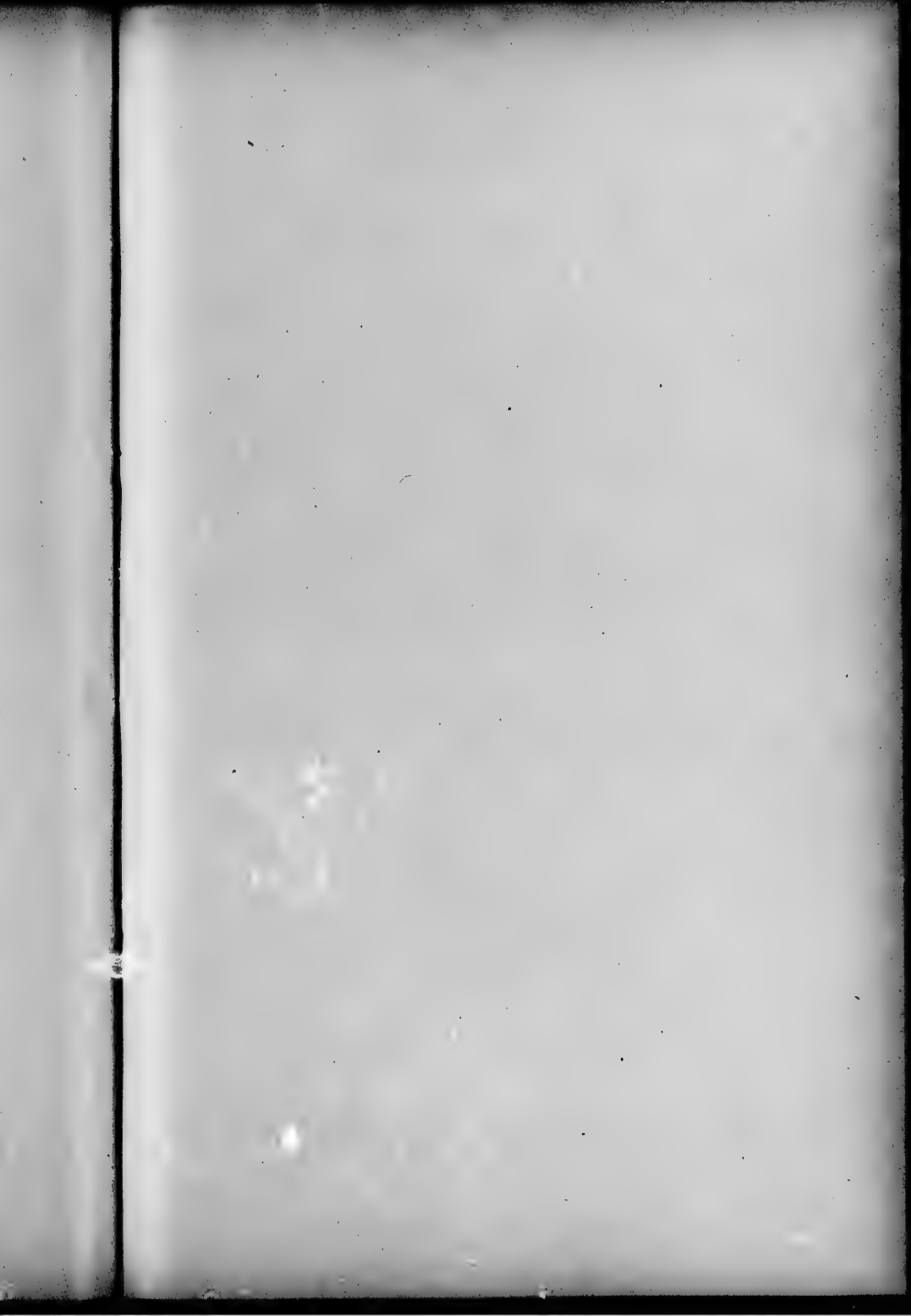
North Pacific Ocean.

69815 (15).

"Map of America." A. Arrowsmith. 1804.

Behring Sea without name.

Behring's Strait. *North Pacific Ocean*.



"*A General and Classical Atlas*" By E. Pattison. S. 32 (6).
1804.

Map 3. The World.

Rather small Map in hemispheres. No names on Behring Sea, Okotak Sea, Japan Sea, &c., though *Hudson's Bay*, *Baffin's Bay*, *China Sea*, &c., shown.

North Pacific Ocean appears alone.

Map 5. Asia.

Western part of Behring Sea shown, but without name, though *Sea of Okotsk*, &c., named.

Pacific Ocean.

Map 7. North America.

Eastern part of Behring Sea shown, but without name.

North Pacific Ocean.

"Voyages along the North-east Coast of Siberia, and Arctic, and Pacific Oceans during Eight Years," &c. (Billings' Expedition.) By Captain Sarychef. St. Petersburg, 1802. [Title in Russian.]

Behring Sea without any general name.

Sea of Kamtschatka, &c., appear precisely as in the next Map, which is a German edition of the same.

"Charte des Nordöstlichen Theils von Sibirien, des Eismeers, des Ostoceans und der Nordwestlichen Küste von America." Entworfen von Saritschew.

From Sarychef's account of Billings' voyages. German translation. Leipzig, 1805.

Behring Sea without any general name.

Das Meer von Kamtschatka appears in the western part of the sea, to north of Commander and the western Aleutian Islands, but is distinctly intended to apply only there. Lettering used in this case same with that of *Das Ochotskische Meer*.

Berings Strasse. *Ost-Ocean oder das Stille Meer*.

"*Reduced Chart of Pacific Ocean by Arrowsmith*." 980 (11).
Additions to 1809. One sheet.

This is a reduction of 980 (12), but evidently from an earlier edition than that elsewhere quoted, extending equally far north, and likewise showing Behring Sea without name.

"*Smith's New General Atlas*." London, 1809.

S. 55 (7).

Map 1. Western Hemisphere. Behring Sea named *Sea of Kamtschatka*.

Bering's Str. *North Pacific Ocean*.

Map 3. The World. Mercator's Projection.

Same as last.

Map 28. Russian Empire.

Behring Sea named *Sea of Kamtschatka*.

Map 31. Asia. Greater part of Behring Sea shown, and portion of America, but without name on sea.

Bering Str. *North Pacific Ocean*. Part of latter name runs over into Behring Sea.

Map 41. America.

Behring Sea named *Sea of Kamtschatka*.

Map 42. North America. Greater part of Behring Sea included in detail, but without name.

Bering's St. *North Pacific Ocean*.

980 (13).

"*Arrowsmith's Chart of the Pacific Ocean.*" This is a large and important Map in nine sheets, specially devoted to the Pacific Ocean. Originally published 1798. This edition with corrections to 1810. The northern edge of the Map runs about latitude 62° north, and it includes the greater part of Behring Sea, but shows it as a large blank unnamed space. *Bristol Bay* alone is rather prominently named. By contrast, the *Sea of Okhotsk*, *Sea of Japan*, and other inclosed seas are named.

K. 116, 66, 2.

"*Karte de Groesen Ocean.*" Solzmann. Perthes. 1810.
Behring Sea named *Kamschatkisches Meer*.

S. 145 (32).

"*Ostel's New General Atlas.*" London, 1810.

Map 1. The World. Behring Sea without name, though *Sea of Okhotsk*, &c., all clearly named.

Bhering's Strait. North Pacific.

Map 19. Asia. Includes all the western part of Behring Sea, but without name.

Pacific Ocean.

Map 24. North America. Includes all eastern part of Behring Sea, but without name.

Bhering's Strait. North Pacific Ocean.

973 (5).

"*Chart of the World.*" Mercator's Projection. Showing Captain Cook's discoveries. Date assigned in catalogues, 1811. (From Guthrie's "Atlas.")

Behring Sea named *Sea of Kamtschatka*.

Bhering's Straits. North Pacific Ocean.

S. T. W. (4).

"*Hydrographical Chart of the World.*" A. Arrowsmith. 1811.

Behring Sea named *Sea of Kamtschatka*.

Bhering's Strait. North Pacific Ocean.

S. 1 (3).

"*New Atlas.*" Fielding Lucas. Baltimore. Assigned date in catalogue, 1812.

Map 2. Western Hemisphere.

Behring Sea named *Kamtschatka Sea*.

North Pacific Ocean.

Map 3. The World. Mercator's Projection.

Behring Sea shown, but without name.

Bhering's Str. North Pacific Ocean.

Map 29. North America.

Behring Sea named *Sea of Kamtschatka*.

Bhering's Str. Pacific Ocean.

H. 76.

"*Goldsmith's Atlas.*" London, 1813.

Map 1. The World. Stereographic Projection.

Behring Sea not named, though *Sea of Okhotsk*, *Sea of Japan*, &c., named.

North Pacific Ocean.

Map 2. World on Mercator's Projection.

Names same as above.

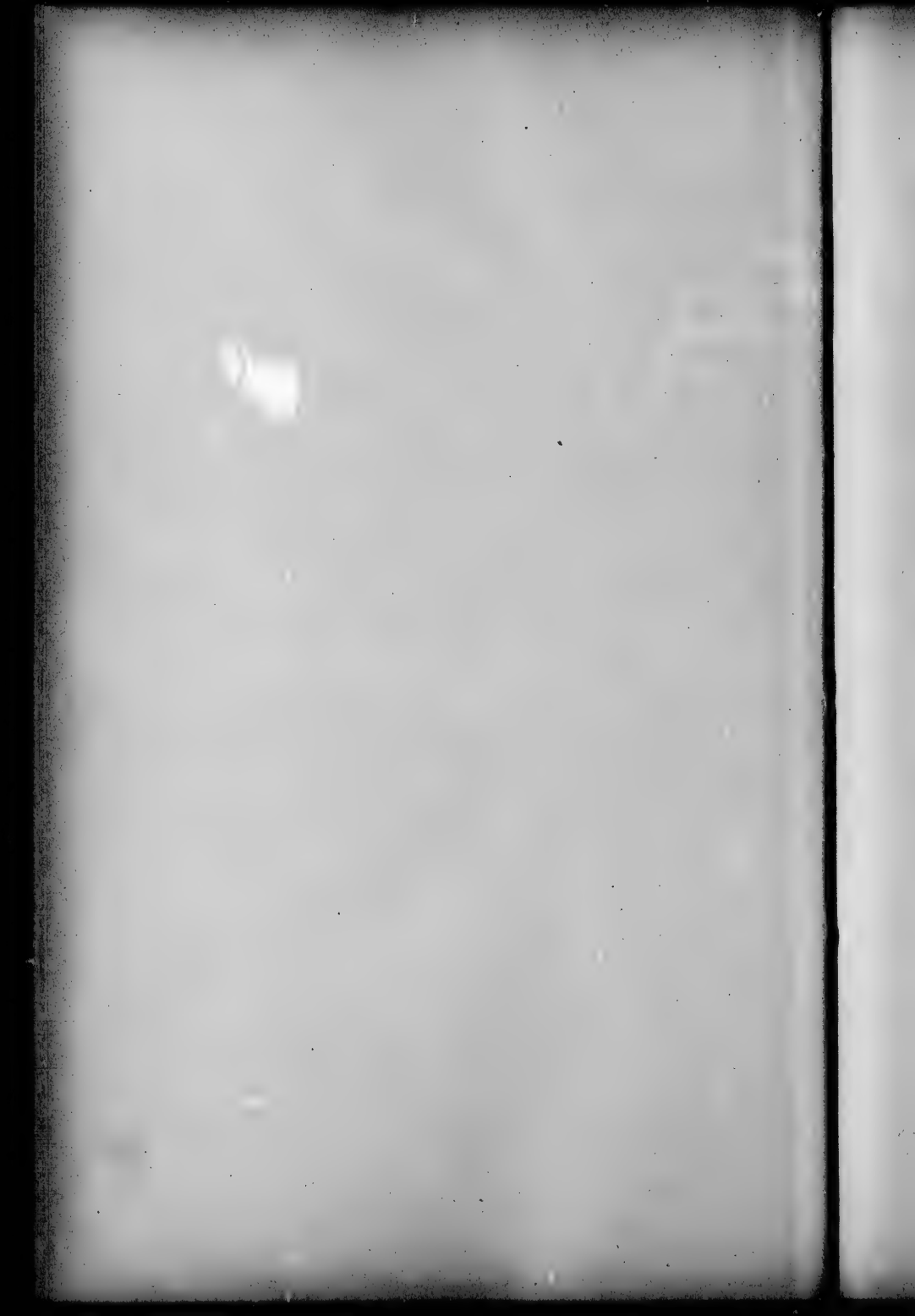
Map 4. Asia. Same as above.

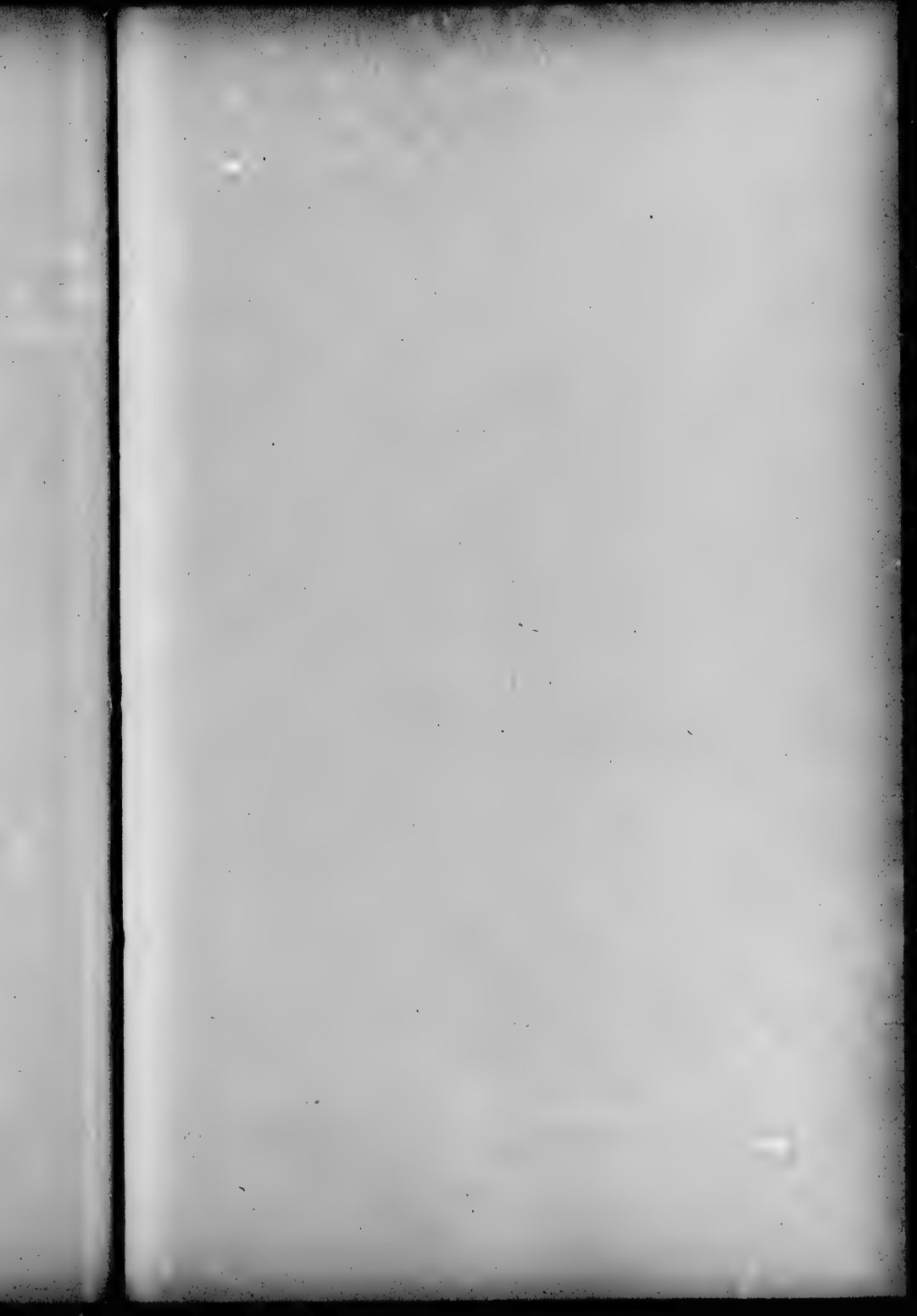
S. 144 (3).

"*New Elementary Atlas.*" Cary. London, 1813.

Map 1. The World. *Sea of Kamtschatka* placed in western part of Behring Sea adjacent to the peninsula of same name. No general name for Behring Sea.

North Pacific Ocean.





Map 2. The World. Same as above.

Map 19. Asia.

Sea of *Kamtschatka*, the name being placed quite close to the land of the peninsula.

Map 25. North America. Whole eastern part of Behring Sea shown, but without name.

"New Map of America." Smith. London, 1814. 69810 (54).
Behring Sea called *Sea of Kamtschatka*.

"Map of the World." Illustrating the voyages and travels of G. H. von Langedorff. In Langedorff, "Voyages and Travels, 1803-7." London, 1814. 4to. 2 vols.

This Map is separately marked on margin as engraved in 1814.

Behring Sea without name, though the author's route passes twice across it.

Berings Strait. North Pacific Ocean.

"Pinkerton's Atlas." London, 1815.

Library number.
S. 67, 4.

No. 1. The World, Western Hemisphere. Behring Sea named *Sea of Kamtschatka*.

No. 3. Northern Hemisphere (Polar Projection). Behring Sea named *Sea of Kamtschatka*. This name, and those of *Sea of Okhotsk*, *Sea of Jesso*, *Yellow Sea*, &c., all in one size and style of lettering, and apparently similarly subordinate to *Grand Northern Ocean*, which is written across the Pacific.

No. 40. About half of the eastern part of Behring Sea is shown on this Map, but without any name, though there is plenty of room for its introduction. *Grand Northern Ocean* written across Pacific.

Nos. 60 & 61. The World, on Mercator's Projection. Behring Sea named *Sea of Kamtschatka*. In one Map is in same size and style of lettering as *Sea of Okhotsk*, in the other in same form as *Davis's Strait*. Part of the name *Grand Northern Ocean* extends to the west of the Kurile Islands chain.

"Carte Encyprotype de L'Amérique." H. Brué. 1815. 69915 (86).

Behring Sea named *Bassin du Nord*.

Behring Strait named *Det. de Behring*.

Pacific named *Grand Ocean*.

"Charte von der Behrings Strasse." Aug. 1816.

In Kotzebue, "Entdeckungs-Reise in die Sud-See," &c. Weimar, 1821. This Chart is the original of that in the English translation. Large part of Behring Sea shown, but without name.

Behrings-Strasse.

"Compendiöser Allgemeiner Atlas." Geog. Inst., Weimar, S. 48 (9). 1816.

Map 2. Western Hemisphere. Behring Sea without name.

Behring Strait named *Cook's Stra.*

North Pacific named *Das Nördliche Stille Weltmeer*.

Map 26. Asia. Behring Sea named here *Kamtschatkaisches Meer*.

Cook, od. Behring's Strasse.

Map 29. America. Part of Behring Sea shown, but without names,

8. 110, 8. "Thompson's New General Atlas." Edinburgh, 1817. Folio.

Map 1. Hydrographical Chart of the World, Mercator's Projection.

Sea of Kamtschatka engraved parallel to the peninsula, and near it. No general names for Behring Sea.

Behring Str. North Pacific Ocean.

Map 2. Northern Hemisphere, Polar Projection.

Behring Sea named *Sea of Kamtschatka*.

N. Pacific named *Grand Northern Ocean*.

Map 5. Western Hemisphere.

Sea of Kamtschatka, but evidently applied to western part only of Behring Sea.

S. of Anadir also appears, though in smaller letters, in north-western part of Behring Sea.

Map 6. Northern Hemisphere, projected on plane of horizon of London.

Behring Sea named *Sea of Kamtschatka*, *Bhering Str.*

Map 35. Asia. Whole of Behring Sea shown.

Sea of Kamtschatka engraved between *Bhering's I.* and the peninsula, and evidently confined to western part of Behring Sea. Manifestly equivalent in rank to *Sea of Anadir*, which is engraved in gulf of that name further north.

North Pacific Ocean.

Map 36. Russian Empire. *Sea of Kamtschatka* on western part of Behring Sea, which alone included.

Bhering's Strait. Pacific Ocean.

Map 52. America. Greater part of Behring Sea shown, but without name.

Bhering's St. North Pacific Ocean.

Map 53. North America. About half of Behring Sea shown, but without name.

Bhering's Straits. North Pacific Ocean.

Map 74. Chart of northern passage between Asia and America.

Behring Sea named *Sea of Kamtschatka* as a whole.

Bering's Strait. Northern Part of Pacific Ocean.

69810 (50). "Charte von America." F. W. Streit. Nürnberg, 1817. Behring Sea named *Meer von Kamtschatka*. Pacific Ocean named *Der Stille Ocean*.

46820 (51). "Russian War Topographical Depot Map." General Map of Asia. St. Petersburg. 1817.

Behring Sea so named, in same style of lettering as Okhotsk Sea, &c.

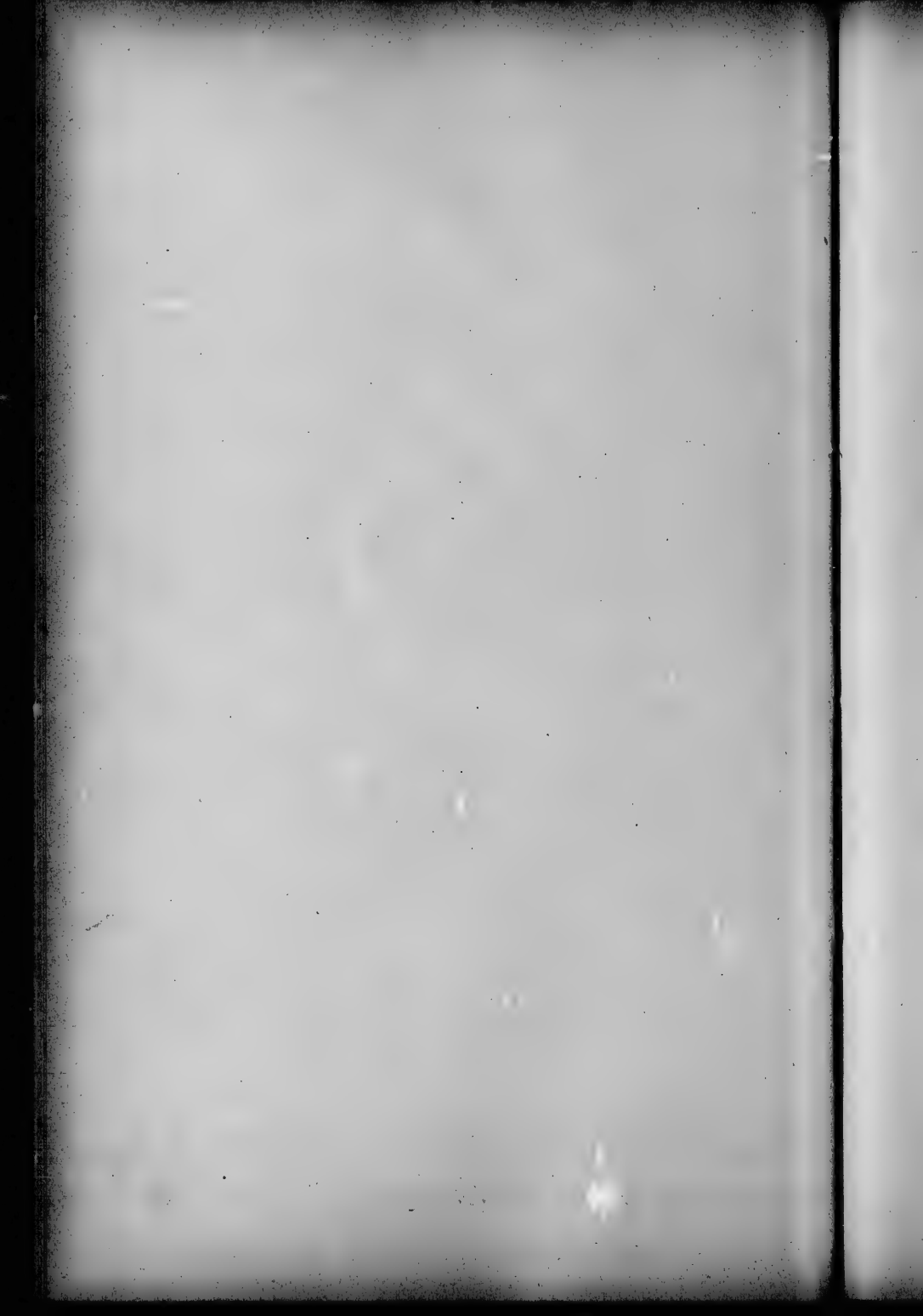
Pacific Ocean so named.

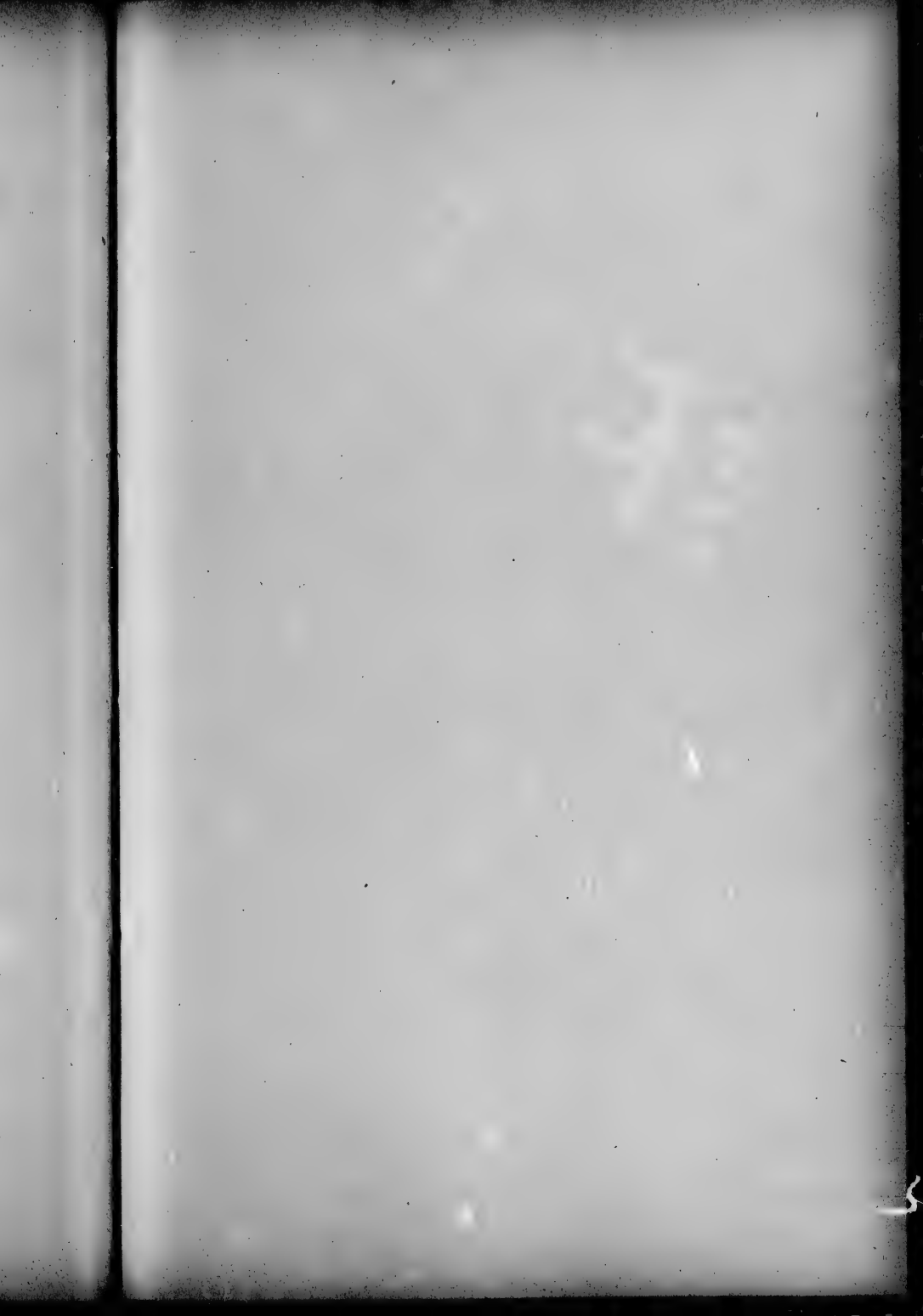
69810 (56). "Charte von America." Streit. F. Campe, Nürnberg. 1817.

Behring Sea named *Meer von Kamtschatka*.

Behring Strait named *Behring oder Cooks Strasse*.

Pacific named *Der Still Ocean*.





"Map of Countries round the North Pole." A. Arrowsmith. 1818. 982 (30).

Behring Sea named *Sea of Kamschatka*.
North Pacific Ocean.

"Map of North Polar Regions." H. M. Leake. 1818. 983 (36).

Behring Sea named *Sea of Kamohatka*.
North Pacific Ocean.

"Map of Countries round the Arctic Ocean." J. Wyld. 1818. 983 (33).

Behring Sea named *Sea of Kamschatka*.

"Map of Countries round Arctic Ocean." C. Smith. 1818. 983 (33).

Behring Sea named *Sea of Kamschatka*.

"Asia." By Arrowsmith. London, 1818.

Behring Sea not named, though a large part of the 2 Tet. (end).
western side included.

"Chart of the North Coast of Asia, and of the Sea to the north of Bering's Strait." In Burney's "Chronological History of North-Eastern Voyages of Discovery." London, 1819.

Greater part of Behring Sea included, but without name, though the northern part of the *Sea of Ochotsk*, which alone included, is prominently named.

"Bradley's Universal Atlas." London, 1819. 3. 29 (23).

Map 1. The Globe.

Behring Sea without name.
Behring's Str. Pacific Ocean.

Map 3. Asia. Shows the whole of Behring Sea, but without name, in manifest contrast to *Sea of Ochotsk*, &c.

Behring's Str. Pacific Ocean.

Map 5. North America. Includes greater part of Behring's Sea, but without name.

Behring's Strait.

"Carte de L'Asie." Brûé. Paris, 1820. 46870 (49).

Behring Sea named *Mer de Behring*.
Behring Strait named *Det. de Behring*.
Pacific named *Grand Ocean*.

"Rossi Atlas." Milan, 1820. 1296, 1. 4.

Map 6. World in Hemispheres.

Behring Sea named *Bacine del Nord*.
Behring Strait named *Str. di Bering*.
North Pacific named *Grande Oceano Boreale*.

Map 7. The World. Mercator's Projection.

Behring Sea appears without name.
Behring Strait named *Stretto di Bhering*.
Pacific named *Mare Pacifico*.

Map 25. Asia.

Behring Sea appears without distinctive name.
G. d'Anadár and Baya di Bristol occupying most of available area for name.

Map 31. Grande Oceano.

Behring Sea appears without name. *Mare d'Ochotsk*,

&c., named, and *Baia di Bristol* in letters of same size and style with these.

Map 84. L'America Settentrionale.

Shows the whole of Behring Sea, but without name.

Behring Strait named *Stretto di Bhering*.

North Pacific named *Oceano Boreale*.

(Notable that on this rather large Map Behring Sea has no name, though *Sea of Okotsk*, though only partially included, is named in prominent characters.)

This Map bears below border, "Incisero l'anno 1821."

"Chart of Bearings Straits on Mercator's Projection, August 1816." In Kotzebue, "Voyage of Discovery into the South Sea," &c. English Translation. London, 1821.

This Chart bears on margin date of production, 1821.

Large part of Behring Sea shown, but without distinctive name.

F. O., No. 16.

"Map of America." By A. Arrowamith, Hydrographer to His Majesty. London, 1822. (Additions to 1823.)

Greater part of Behring Sea included, but without name.

Behring's Strait. North Pacific.

S. 100 (15).

"American Atlas." Carey and Son. Philadelphia, 1825.

Map 3. Eastern part of Behring Sea shown, but without name.

Str. of Bhering. Pacific Ocean.

69810 (16).

"America." R. Wilkinson. London, 1824.

Behring Sea named *Sea of Kamtschatka*.

S. 145 (4).

"Waltcharts in Mercator's Projection." Von Christian Gottlieb Reichard. Nuremberg, 1825.

Behring Sea named *Meer von Kamtschatka*.

Behring's Strasse. Nordlicher Grosser Ocean.

S. 183 (37).

"Butler's Atlas." London, 1825.

Map 1. The World, in Hemispheres.

Behring Sea shown without name, though *Sea of Ochotsk*, &c., named.

Bhering's Strait. North Pacific Ocean.

Map 16. Asia.

Behring Sea named *Sea of Kamtschatka*.

S. 49 (8).

"A New General Atlas." A. Finley. Philadelphia, 1825.

Map 1. Western Hemisphere.

Behring Sea named *Sea of Kamtschatka*.

Bhering's Straits. North Pacific Ocean.

Map 3. The World. Mercator's Projection.

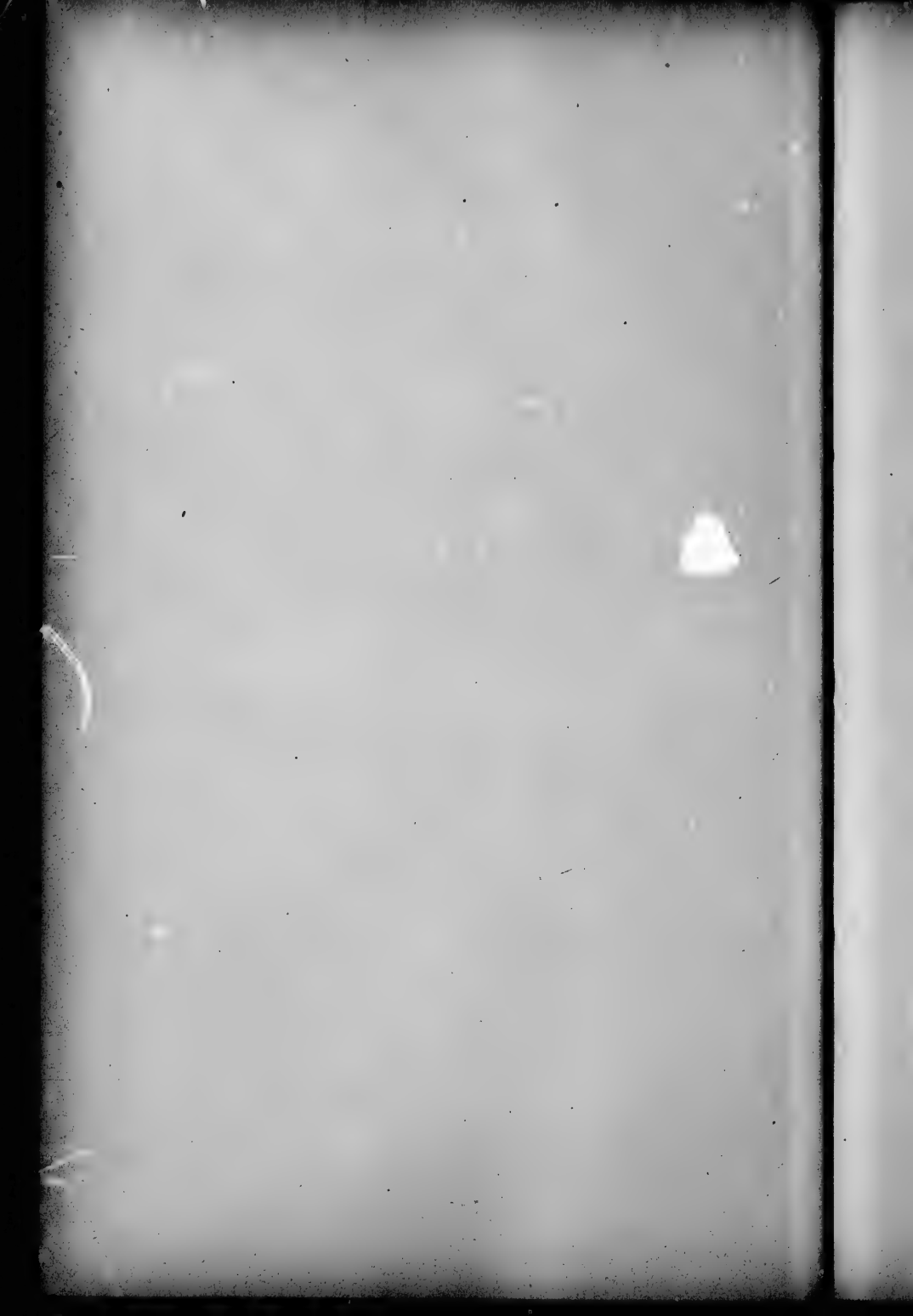
Behring Sea shown without name.

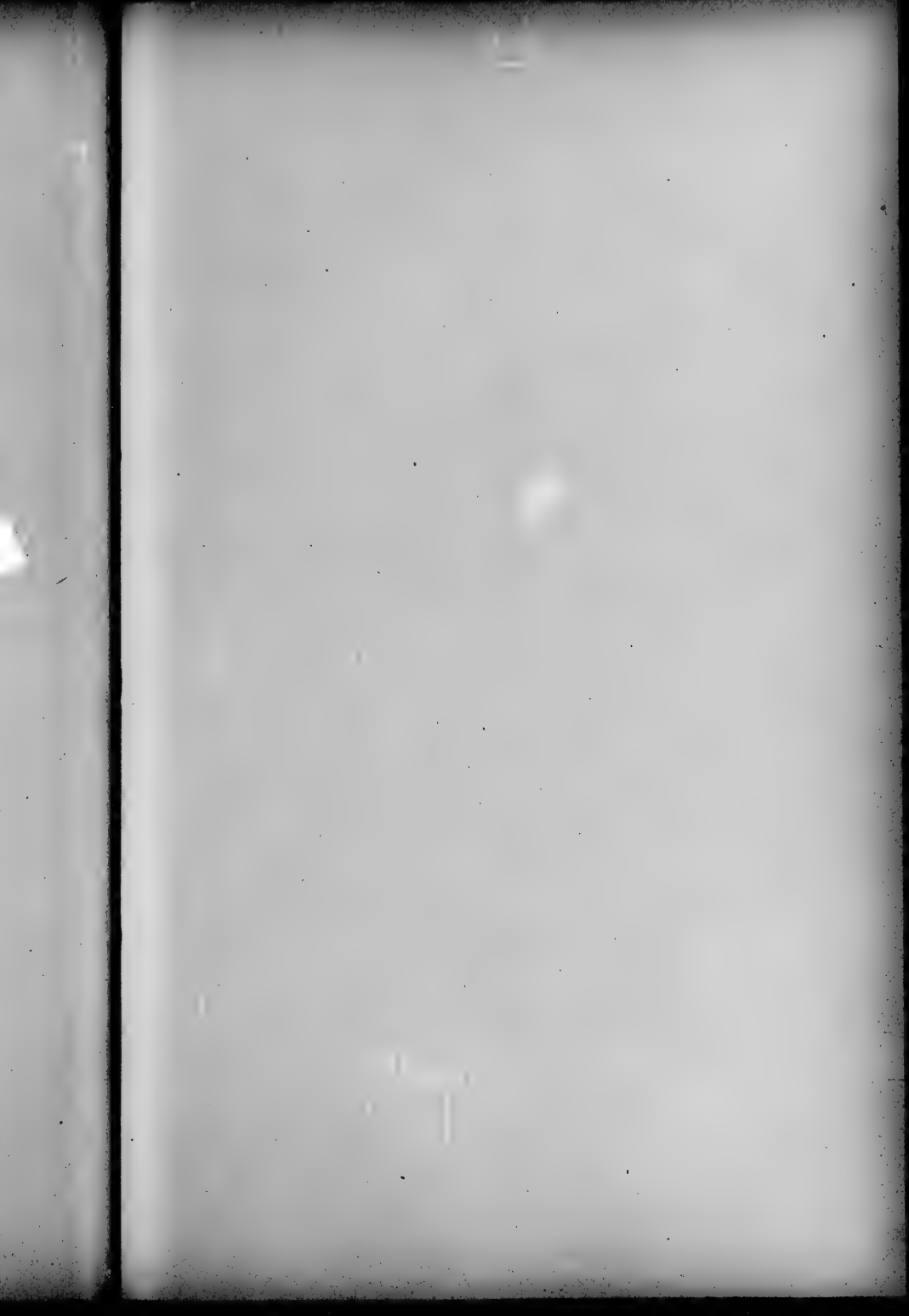
Bhering's Straits. North Pacific Ocean.

(*Sea of Ochotsk, Baffin's Bay, &c.*, all named.)

Map 4. North America. Behring Sea included in part, but without name.

Map 51. Asia. Greater part of Behring Sea included, but without name.





"Smith's General Atlas." London, 1826. S. 186 (21).

Map 1. The World, in Hemispheres.

Behring Sea named *Sea of Kamtschatka*.

Bhering's St. North Pacific Ocean.

Map 31. Asia. The greater part of Behring Sea shown, but without name.

Sea of Anadir, in north-west part of Behring Sea, very prominently named.

Bering's Str. North Pacific Ocean.

(The latter name, as in previous edition of this Map, extending over part of Behring Sea.)

Map 33. Russian Empire.

Behring Sea named *Sea of Kamtschatka*.

Map 47. Behring Sea named *Sea of Kamtschatka*.

Map 48. North America. Western part of Behring Sea shown, but without name.

Bhering's St. North Pacific Ocean.

"Nordamerika und Westindien." Versen. Assigned 68915 (37); date in Catalogue, 1827.

Behring Sea named *Meer von Kamtschatka*.

Behring Strait named *Cook's Strait*.

"Carte Générale de l'Océan Pacifique." By Krusenstern. 14001, K. 2. St. Petersburg, 1827.

Behring Sea named *Mer de Behring*.

"Chart of the World," upon Mercator's Projection. 978 (6). Cary. London, 1827.

Behring Sea without name, though *Sea of Okhotsk*, &c., prominently named.

Bhering's Strait. North Pacific Ocean.

"The Bacon Comparative Atlas." By A. Arrowsmith. S. 12 (3). London, 1828.

Map 3 Asia.

Western part of Behring Sea shown, but without names.

Bhering's Strait, Sea of Okhotsk, &c., named.

North Pacific Ocean.

Map 27. Western Hemisphere.

Whole of Behring Sea shown, but without name.

Bering's Str. named.

North Pacific Ocean.

"A New General Atlas." John Grigg. Philadelphia, S. 49 (9). 1828.

Map 1. Western Hemisphere.

Behring Sea without name.

Bhering Str. North Pacific Ocean.

Map 14. Asia.

Behring Sea without name.

"Asia." A. R. Frémin. Paris, 1829. 46820 (23).

Behring Sea named *Bassin du Nord, ou de Behring*.

Pacific named *Grand Océan, Mer de Sud, ou Océan*

Pacifique.

"Asien." Schmidt. Berlin, 1829.

46820 (22).

Behring Sea named *Kamtschatkisches Meer*.

Behring Strait named *Behring Strasse*.
Pacific named *Das Grosse Weltmeer*.

"*Atlas Universel de Géographie*." Lapie. Paris, 1829.
No. 16. A Map of the World on Mercator's Projection.
Separately dated on engraving, 1832.

Behring Sea is marked *Mer de Béring* in letters same size and style as those employed for *Baie de Baffin*, and larger than those used for *Mer d'Okhotsk*, *M. de Saghalien*, etc.

The Pacific is named *Grand Ocean Equinocial*, this name running along the Equator.

No. 17. Map of the World in Hemispheres. Separately dated on engraving, 1831.

Behring Sea named as above, but the North Pacific named *Grand Ocean Boréal*.

(The spelling of Béring on these Maps, and the names used for the Pacific, seem to show that they, or previous editions of the same, were not employed by the negotiators.)

S. 76 (92).

"*An Atlas of Modern Geography*." A. Arrowsmith. 1830.

Map 1. Behring Sea shown without name.

North Pacific.

Map 28. Similar to last.

S. 23 (11).

"*A Comparative Atlas*." By A. Arrowsmith. London, 1830.

Map 27. Western Hemisphere.

The whole of Behring Sea shown, but without name.

Beerings Strait. North Pacific Ocean.

Map 28. North America.

Greater part of Behring Sea shown, but without

name.

Beerings's Str. North Pacific Ocean.

69310 (86).

"*America*." Prof. J. M. F. Schmidt. Berlin, 1830.

Behring Sea named *Meer von Kamtschatka*.

North Pacific named *Die Nord See*.

"Chart showing the Track of H.M.S. 'Blossom' in Narrative of a Voyage to the Pacific and Beerings's Strait, 1825-28." London, 1831.

Behring Sea shown, but without name.

Beerings's Strait. North Pacific Ocean.

S. T. W. (4).

"Hydrographical Chart of the World." A. Arrowsmith. London. New edition. 1832.

Behring Sea named *Sea of Kamtschatka*.

Beerings's Strait. North Pacific Ocean.

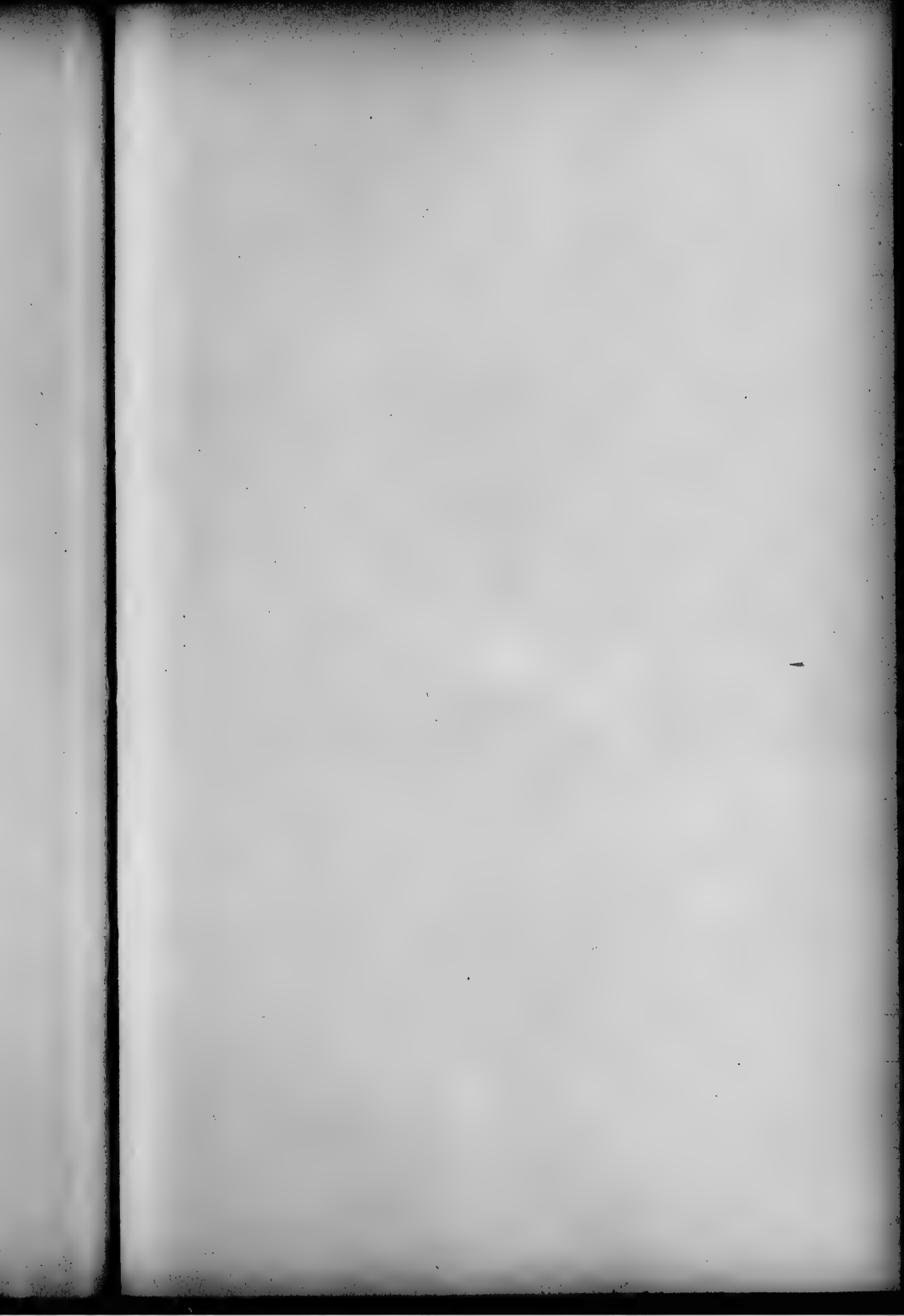
990 (13).

"*Arrowsmith's Chart of the Pacific Ocean*." Another edition, corrected to 1832, and with note below title, stating that corrections made in 1810, 1814, 1817, 1818, 1822, 1826, and 1832.

In the 1832 edition the size and general outlines are as before, and Behring Sea is still without name. Other enclosed seas named as before.

(It may be supposed that the negotiators for Treaty of





1825 were supplied with corrected copy to 1822, and it is clear that on this copy the nomenclature must have been the same as on those of earlier and later dates.)

"Map of the Pacific Ocean in 'Arrowsmith's Atlas.'" S. 68, 7.
London, 1835.

Behring Sea, or Sea of Kamtschatka.

"Weltkarte in Mercator's Projection." Reichard. 920 (106).
Nürnberg, Neue Aus Gabe, 1839.

Behring Sea named *Meer von Kamtschatka*.

Behring's Strasse. Nördlicher Grosser Ocean.

"Carte de L'Océan Pacifique." In Atlas accompanying
Duflet de Morfas' work. Paris, 1844.

Behring Sea without name, though *Mer d'Okhotsk*, &c.,
prominently named.

Dét. de Bering. Grand Océan Septentrional.

CONFIDENTIAL.

Memorandum on the question of Closed Seas.

A Note setting forth briefly :
(1.) The history of international action relating to seas claimed to be Closed Seas ;
(2.) The action of Great Britain in relation to those ; and
(3.) The present international view in relation to them.

C. R.

SO much has been written by writers on international law on the subject of closed seas (*mare clausum*), of open seas (*mare liberum*), of the high seas generally, of the right of fishery in oceans and bays, of the passage of Straits, in order to gain access to internal waters, and so forth, that it would be impossible to give anything like an historical account of what has taken place, internationally, or what views have been entertained upon these subjects by this country, within the short time allowed for the preparation of this Memorandum.

The following remarks, however, may not be without interest.

It is not proposed to allude to the discussions which have taken place between this country and Russia and the United States upon the subject of the *mare clausum* as applied to oceans and bays, as that has already been fully considered in discussing the right of fishery in Behring Sea ; but to state very briefly what has passed with regard to the Black Sea, the Straits of the Dardanelles and Bosphorus, the Sound, the Baltic, the Gulf of Arta, the Bay of Cattaro, the Gut of Canso, the Caspian Sea, the Gulf of Finland, the Zuid-*rade*, and the Bristol and St. George's Channel.

The Black Sea.

Lawrence's Wheaton, 1868, p. 329.

So long as the shores of the Black Sea were exclusively possessed by Turkey, that sea was considered a *mare clausum*, and foreign nations were excluded from navigating it ; that is to say, they were prevented from passing from the Mediterranean through the Straits of the Dardanelles and Bosphorus in order to reach that sea.

The entrance to those Straits is less than 2 miles across, and the land on either side belongs to the

same territorial Power, Turkey, who claimed and exercised the right of excluding foreign vessels, whether of war or of commerce, from her internal waters. But since the territorial acquisitions of Russia and the commercial establishments made by that Power on the shores of the Euxine, both Russia and other Maritime Powers have become entitled to participate in the commerce of the Black Sea. They have acquired, consequently, a right to the navigation of the Straits by their merchant-vessels, although, according to ancient rule, confirmed by successive international agreements, their ships of war are excluded in time of peace.

As bearing on the general question of the right of sovereignty over narrow seas, it may be stated that, at the time of the conclusion of the Treaty of July 1840, between the four Powers and Turkey, for the pacification of the Levant, the British Government contended, with reference to the right of the Porte to close the Dardanelles and Bosphorus to foreign *ships of war*, that every nation was considered as having territorial jurisdiction over the seas which washed its shores, as far as 3 miles from low-water mark, and, consequently, that any strait which was bounded on both sides by the territory of the same Sovereign, and which was not more than 6 miles wide, was within the territorial jurisdiction of that Sovereign.

State Papers, vol. xxviii, p. 342.

The same principle was admitted by Great Britain at the time of the conclusion of the Treaty of the Dardanelles of 1809, and by the five Powers of Europe in the Convention with Turkey of the 13th July, 1841, respecting the Dardanelles and Bosphorus.

Ibid., vol. i, p. 706.

Ibid., vol. xxix, p. 702.

The Sound and Baltic.

The King of Denmark, as Sovereign also of Norway, formerly asserted supremacy over the Sound and the two Belts, which form the outlet from the Baltic into the North Sea or German Ocean; and the Baltic itself was considered by the maritime Powers possessing territory on its coasts as a *mare clausum* against the exercise of hostilities upon its waters by other States, whilst the Baltic Powers were at peace.

Lawrence's Wheaton, 1843, p. 331.

Tracts, p. 75.

But Wheaton says the British Government in 1807 denied that it had, at any time, acquiesced in the principle upon which the inviolability of the Baltic was maintained.

Wheaton, p. 333.

The Gulf of Arta.

This gulf was formerly in the exclusive jurisdiction of Turkey, and was then held by that Power as a *mare clausum*, the entrance to the gulf being less than a mile across, and both sides of it then being in the possession of the Sultan.

"Map of Europe by Treaty," vol. II,
p. 906; vol. IV, p. 2964. Con-
fidential Memorandum No. 3363.

On the 21st July, 1833, an arrangement was concluded between Great Britain, France, Russia, and Turkey respecting the continental limits of Greece, by which it was agreed that the boundary-line between the Greek and Turkish possessions should run through the Gulf of Arta.

Both sides of the Strait leading to the gulf were, however, confirmed to the Porte, on the understanding that the Ottoman authorities should not oppose any obstacle to the passage of Greek vessels; the words used being, in the French version, "*bâtimens* Grecs*."

Memorandum No. 3363.

During the Russian war, in 1854, the Turkish authorities closed the Gulf of Arta against arrivals from Greece, and the British and French cruisers (those Powers being then in alliance with Turkey) were instructed to stop all Greek vessels entering the gulf, and to seize all such as they might find in its waters laden with supplies, or carrying men for the insurgents in Epirus; although orders were given to them, at the same time, not to impede the lawful conveyance of Greek subjects.

In 1867, also, during the dispute between Turkey and Greece respecting brigandage and the incursion of Turkish troops over the frontier into Greek territory, the Turkish Minister at Athens informed the Greek Government that it would not be allowed to send a vessel of war into the Gulf of Arta.

The Greek Government maintained that it had a Treaty right to send vessels of war, as well as merchant-vessels, into the gulf; but the Porte maintained that the gulf was a *mare clausum*.

The Greek Government threatened to try the question; but on being told that if they did so it would be opposed by force, they desisted.

The Bay of Cattaro.

MS. Memorandum, September 1854,
Austria, vol. 446.

In 1850, and again in 1852, discussions took place between the Turkish and Austrian Govern-

* The word "*bâtiment*" ordinarily signifies a merchant-vessel as opposed to "*vaisseau*," which denotes a ship of war. The word "*navire*" is generally considered to include both categories.

ments with regard to the right of the former to open to general trade the ports of Klek and Sutorina. These ports are situated at the extremity of two tongues of land belonging to the Turkish province of Herzegovina, and jutting out into bays which border it. The bay in which Klek is situated communicates with the Adriatic by the Channel of Stagno, and that in which Sutorina is placed by the Bocca di Cattaro. The narrow entrances to both these bays were held by Austria.

The discussions originated in the Porte deciding to occupy and make use of these strips of land, and attempting to land troops on their territory from a Turkish frigate which entered the Gulf of Cattaro for that purpose.

Austria protested against this proceeding, on the ground that, when the tongues of land of which Klek and Sutorina consisted were ceded by Ragusa to Turkey at the time that that Republic placed itself under the protection of the Porte, Venice retained its dominion over the sea, and that Austria, succeeding to the Venetian rights, kept ships of war in front of those places, the entrances to which were within range of Austrian batteries, and should be considered as a *mare clausum*, over which, it was said, Austria had a command even more complete than that of other countries over the Dardanelles, the Sound, or the Elbe at Stade.

The question in dispute was referred to the Queen's Advocate, who pointed out the differences of opinion which had at all times arisen with respect to the right of navigating territorial waters, whose communications were interrupted by the territories of other and different States; but he gave it as his opinion that, *prima facie*, the Austrian view was maintainable.

The Gut of Canso.

The colonists of Nova Scotia on several occasions memorialized the Prince Regent against the Treaty between this country and the United States of 1818, and in a Memorial to Her Majesty in 1837, they complained of the mode of fishing adapted by the Americans.

They urged that the 3-mile limit closed the Gut of Canso against American vessels, and they prayed that such means might be adopted by the Imperial Government as would protect their fisheries against the encroachments of American fishermen.

The Queen's Advocate, to whom the question

was in the first instance referred, was of opinion that the terms of the Convention did not deprive the citizens of America of the right of *passing through* the Straits of Canso for the purpose of taking fish, in common with British subjects, in the Gulf of St. Lawrence; but, in 1841, in consequence of the attempts made by the Colonial Government to enforce the rights of Great Britain with regard to the fisheries, Mr. Stevenson, the American Minister in London, complained of the measures which had been adopted, more particularly as related to the exclusion of the United States' fishermen from the Bays of Fundy and Chaleurs, and from passing through the Gut or Strait of Canso.

Law Officers, March 10, 1838.
Ibid., August 30, 1841.
Memorandum, Mr. Green, North
American Fisheries, July 1866.

The several questions raised by the American Minister, as well as by the Colonial Government, were referred to the Law Officers of the Crown, who reported, with reference to the Gut of Canso, that, in their opinion, the Americans had no right, by Treaty or otherwise, to navigate that passage.*

The Caspian Sea.

Persian Treaties, 5vo, p. 121.

Although Persia, as well as Russia, occupies a large extent of territory on the shores of the Caspian, Persian merchant-vessels are alone permitted to navigate that sea on the same footing as Russian merchant-vessels.

None but Russian vessels of war are allowed on the Caspian; and the establishment of Companies for the navigation of that sea is prohibited except to Russian subjects, and foreigners are not allowed to have shares in such Companies.

The Gulf of Finland.

Finland was conquered by Russia in 1713; restored to Sweden in 1721; ceded to Russia in 1809. Ortolan, p. 164.

Ortolan says that before the cession of the Province of Finland to Russia, the right of Sweden to the gulf was not contested.

The Zuiderzée.

Ortolan also says that M. de Martens, in his "Précis du Droit des Gens Moderne," asserts that Holland has an exclusive right in the Zuiderzée.

* The British Government have also claimed the right to exclude belligerent vessels from passing through the Strait between the Island of Hong Kong and the opposite territory of Kowloon. (Law Officers, October 14 and November 25, 1874.)

The Bristol and St. George's Channels.

Phillimore, in his International Law, says the Phillimore, vol. 1, p. 201. exclusive right of the British Crown to the Bristol Channel, to the channel between Great Britain and Ireland, and to the channel between Scotland and Ireland, is uncontested.

E. HERTSLET.

Foreign Office,

December 25, 1892.

23
2023
18

*Note on the General Objects of Trade and
Mercantile Enterprise on the North-
West Coast of America, and the Changes
undergone by them.*

THE SEA-OTTER, THE FUR-SEAL, AND WHALING.

THE *sea-otter* was, in the first instance, and continued for many years to be, the principal object of all the Russian expeditions to the region of Behring Sea. The history of the discovery and appropriation of territory was in effect that of the extension of sea-otter breeding and trading, and the safeguarding of these interests.

Bancroft writes :—

"History of
Alaska," p. 281.

"We have seen how the Cossacks were enticed from the Caspian and Black Seas, drawn over the Ural Mountains, and lured onward in their century-march through Siberia to Kamtchatka, and all for the skin of the little sable. And when they reached the Pacific they were ready as ever to brave new dangers on the treacherous northern waters, for the coveted Siberian quadruped was here supplanted by the still more valuable amphibious otter."

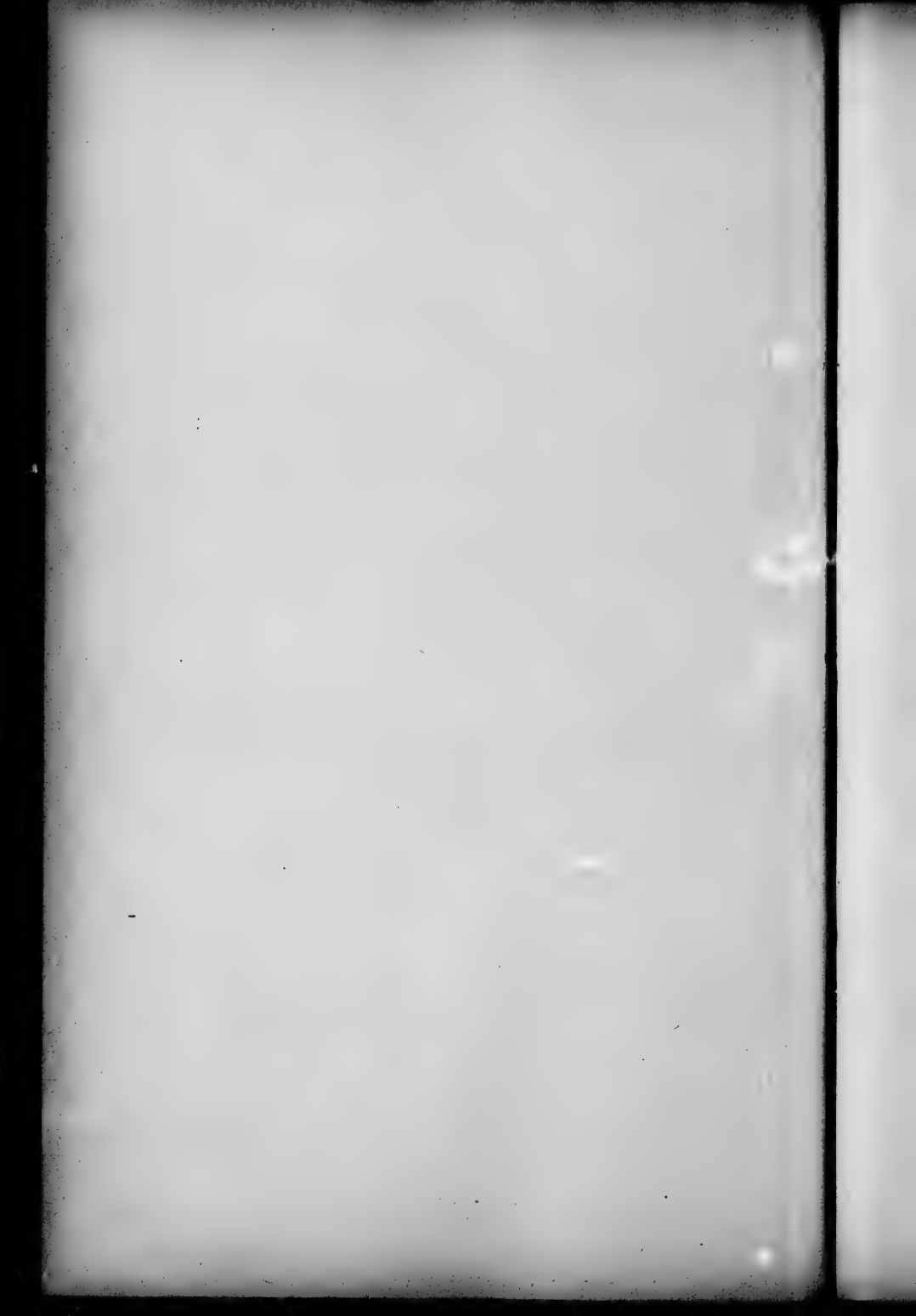
Again, in another place, the same author sums up the result of his investigations on this subject as follows :—

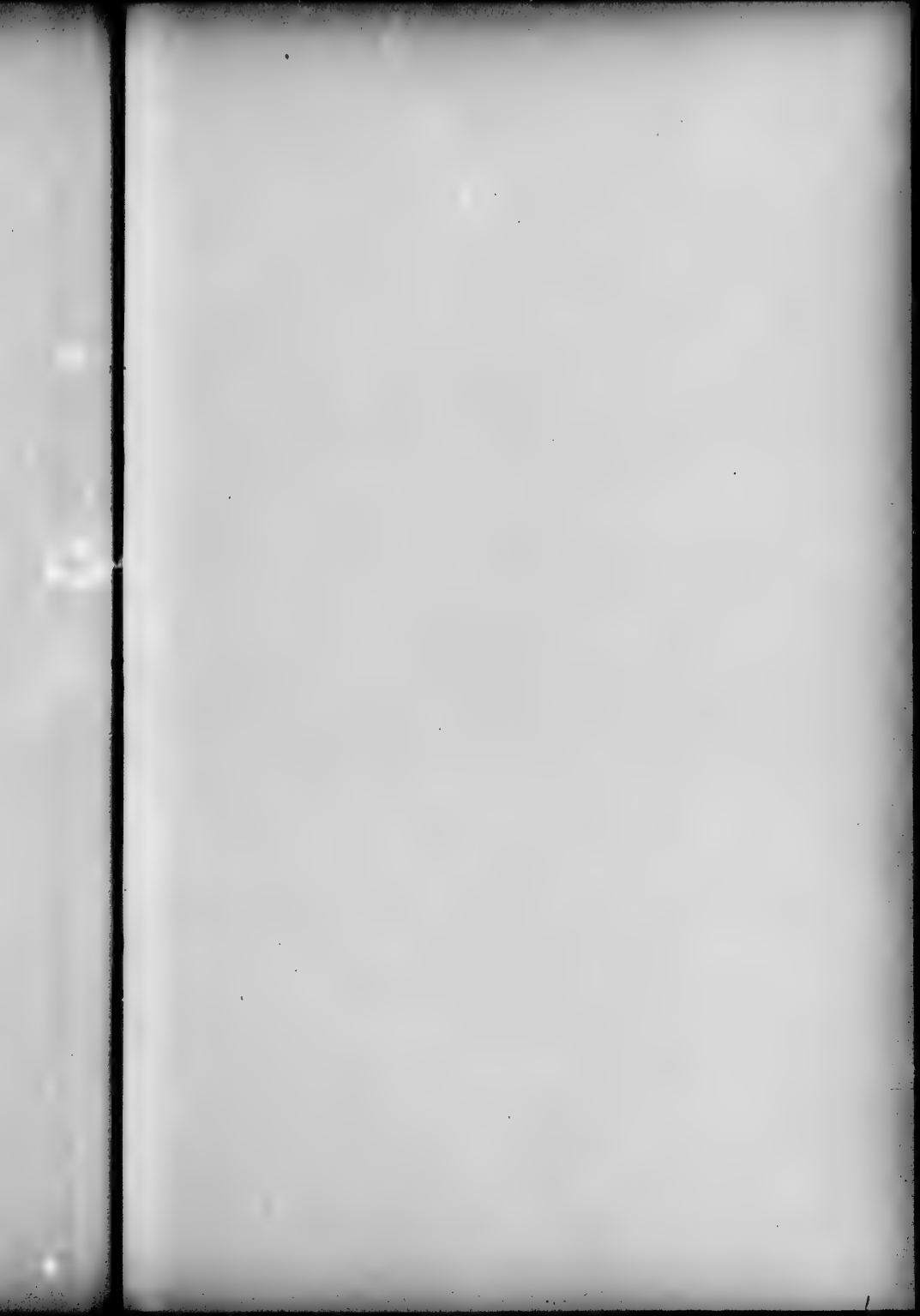
"History of the
North-West
Coast," vol. 1,
pp. 343, 345.

"The fur of this amphibious animal, the most precious of all peltries, was the attraction that brought to these shores all the adventurous navigators whose exploits have been briefly recorded in the preceding chapters. A few did not engage directly in the fur trade, but all such, with the possible exception of Captain Cook, came because of the operations of the fur-seekers.

• • •

"There were other valuable furs in the country besides that of the *sea-otter*, which were profitably exported in connection with the latter, but there were none which of themselves would in the early years have brought the world's adventurous traders on their long and perilous voyages to the coast. The fur-seal, however, was taken in large





numbers, and in later years yielded greater profits, on account of its greater abundance, than the sea-otter."

The market for these skins was in the beginning found by the Russians in their own country, but before many years China also became a favourite market, the centre of the trade being at first in Irkutsk, and afterwards at Kiatcha. In 1785, and after Cook's third voyage, which is regarded as having opened the trade between the American coast and China by sea, this trade sprang into existence, and was for some years almost exclusively enjoyed by English vessels. Hanna, Portlock and Dixon, Meares, and many others visited the coast in connection with this particular trade. At a later date, and nearly contemporaneous with the first years of the present century (beginning about 1788), vessels from the eastern part of the United States began to engage in this trade, and eventually succeeded in securing the greater part of it, and continued their operations till the increasing scarcity of the sea-otter itself naturally brought them to a close, or reduced the trade to very small dimensions.

This great diminution in the volume of the trade in sea-otters occurred about the year 1846, according to Sturgis and Greenhow, who are quoted by Bancroft, and thereafter, and as a direct consequence of the scarcity of the sea-otter, the commerce of the entire coast became practically monopolized by two great Corporations, the Russian-American and Hudson's Bay Companies.

That more details are not actually on record as to the places visited, and the scope of the trading voyages of the numerous vessels engaged in such trade when it was at its best, is largely accounted for by the fact that the adventurers generally concealed such details, with the object of reaping further individual benefit from their respective discoveries.

Meanwhile, and with the increasing rarity of the sea-otter, the trade in fur-seal skins became relatively more important. It cannot, however, be regarded as having originated at this time, for its prosecution had been continuous, to a varying extent, from the date of Behring's voyage in 1741, and a much larger number of skins were obtained in years subsequent to 1786, in which year the Pribyloff Islands had been discovered. This particular trade, however, fell very largely

"History of the North-West Coast," vol. i, pp. 375-377.

Ibid., p. 361 (see also Francher's narrative, p. 17).

into the hands of the Russians, who had established posts of one kind or another upon the principal breeding islands of the seal, and at other points of vantage on the northern coasts.

The conditions just outlined had almost arrived about the years 1842 and 1845, when a new industry extended to the area of Behring Sea, that of whaling. A new and numerous fleet was created for the prosecution of this industry, in which Russia had no part, or at best a very small one. The whalers, moreover, soon began everywhere to compete in the trade for furs. The Governor of Russian America complained, but in vain, for already the claims which had been advanced to a monopoly of the region by his Government had been abandoned.

When, in 1824, the Representative of Russia, by direction of his Government, which had been importuned by those interested in the Fur Company, approached Mr. Adams to endeavour to repudiate or modify part of the Convention between Russia and the United States, in so far as this related to the northern part of the North Pacific where Russian posts were actually established, Mr. Adams would not consent to any such modification. The Convention had not at this time been ratified, but the Russian objections were withdrawn or allowed to fall into abeyance, and the ratification followed.

Mr. Adams confined himself to assuring the Russian Minister in the following terms:—

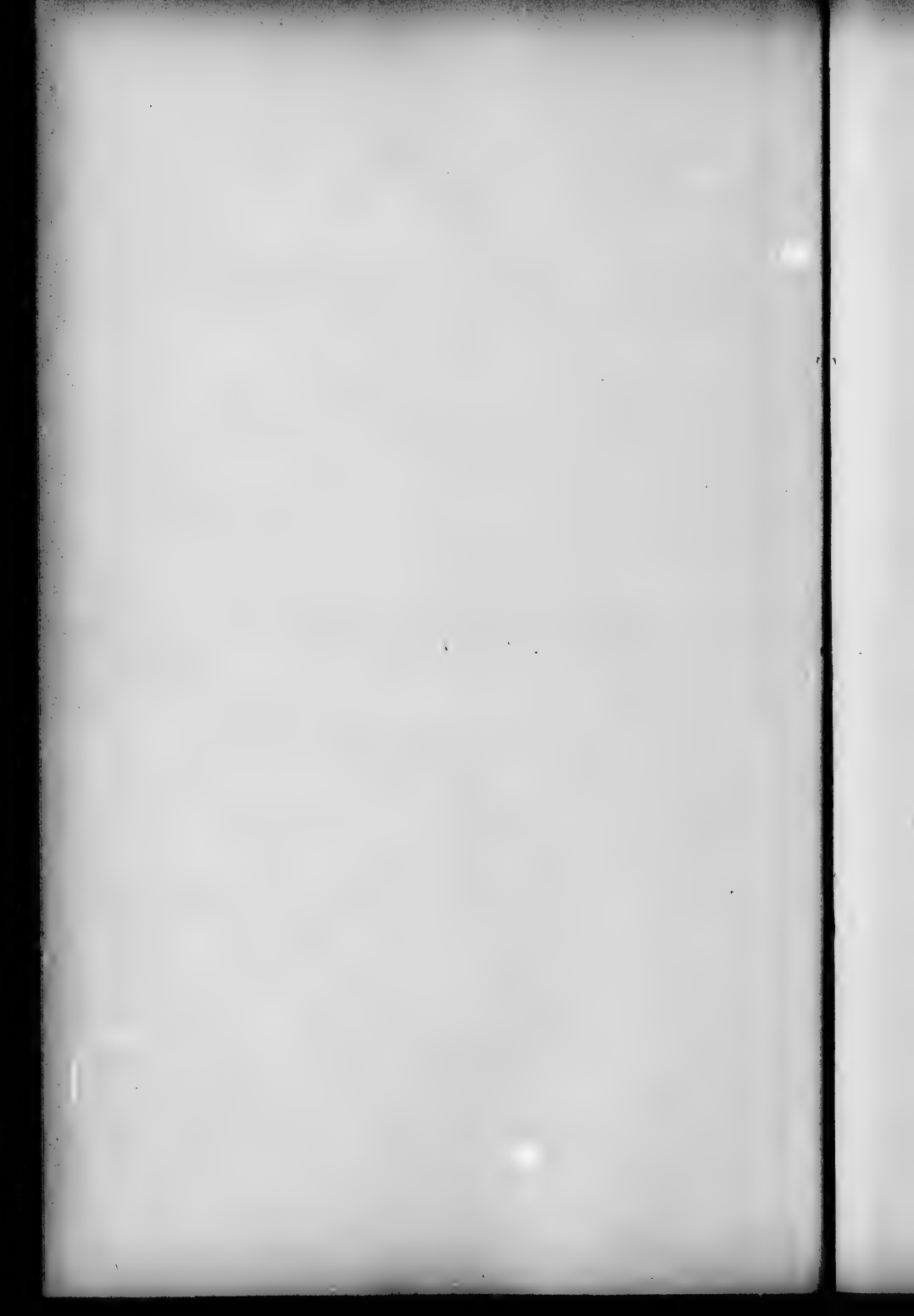
"Our merchants would not go to trouble the Russians on the coast of Siberia, or north of the 57th degree of latitude [that being approximately the latitude of Sitka, or New Archangel], and it was wisest not to put such fancies in their heads."

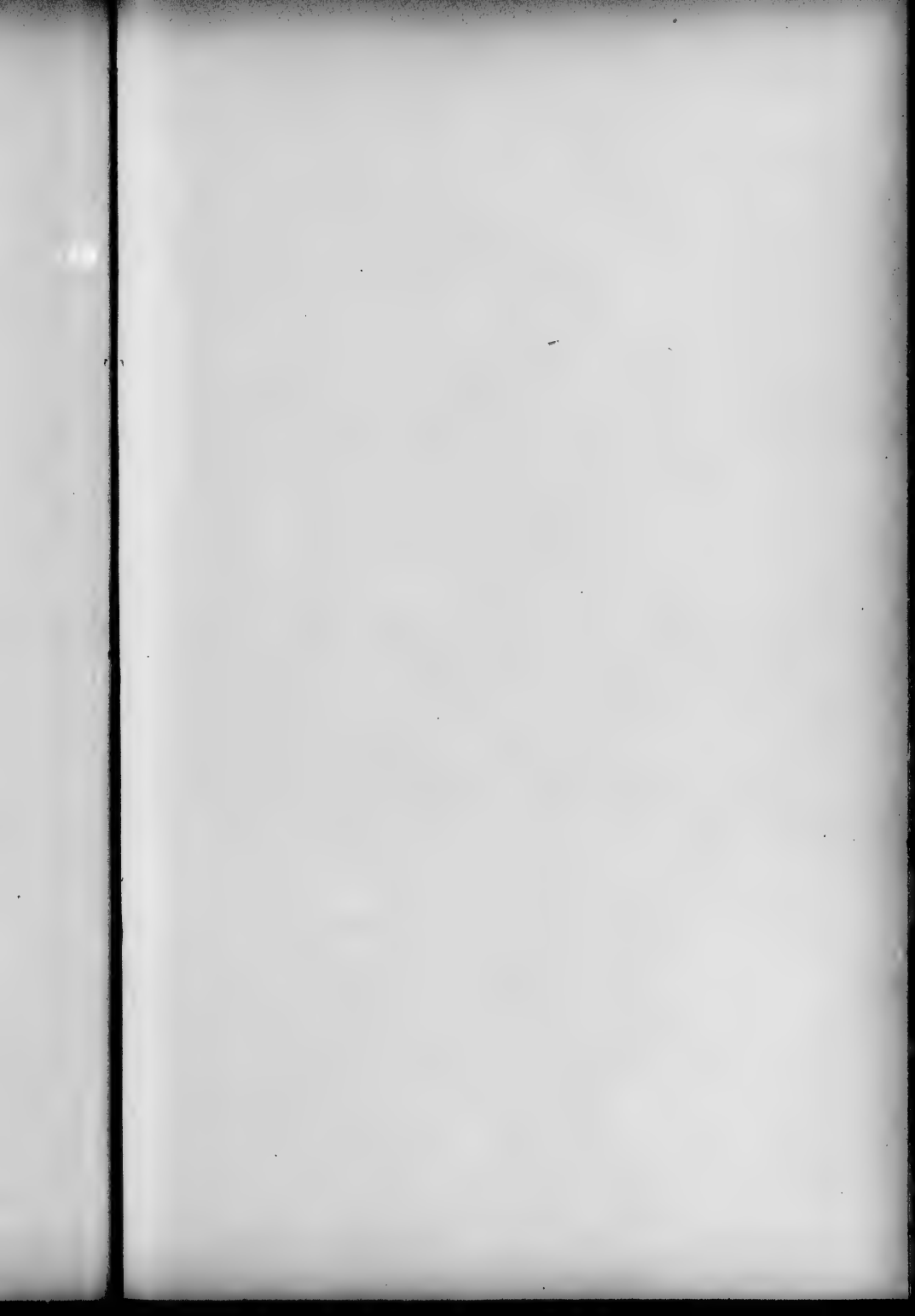
This "assurance" proved, however, illusory, and showed not only a want of recognition of the extent to which vessels of the United States, as well as those of Great Britain, had already carried on trade in previous years, but was shortly afterwards contradicted by further facts of the same kind.

From similar complaints which continued to reach the Russian Government after 1842, it appears that the whalers which at this time began to enter Behring Sea did not confine their operations to the sea alone, but even—

"History of Alaska," pp. 583, 584.

"landed on the Aleutian Islands and other portions of the coast for the purpose of trying-out blubber,"





employing for that purpose the scanty supplies of drift-wood which served the natives for fuel. They were further accused of—

“carrying off the supplies of dried fish reserved for hunting parties, and bartering liquor, arms, and powder with the natives for *furs*.”

Speaking of the reduction in the quantity of the furs shipped by the Russian Company during its third term of twenty years, Bancroft says:—

“This was caused mainly by the encroachments of foreign traders, and especially of American whaling-vessels, whose masters often touched at various points in the Russian possessions during their voyage, and paid much higher prices for furs than those fixed by the Company’s tariff.”

In speaking of the inducements to trade and commerce generally on the north-west coast of America as early as 1790, Meares alludes at some length to the prospective value of whaling:—

“But the most valuable branch of commerce which is offered spontaneously by the north-west American coast, is the whale fishery, which may be carried on to any extent, as those fish, both of the black and spermaceti kind, are universally abundant in these seas, with other marine animals which yield an oil of a very superior quality.”

“Voyage to the North-West Coast of America, 1788-89.” 8vo. edition, 1791, vol. ii, p. 267.

Whaling in the North Pacific, however, actually remained undeveloped till a date very much later. It may be said to have been initiated in 1820, when whalers first visited that part of the North Pacific lying off the coast of Japan, where sperm whales were then found to abound. The “Japan ground” included the region from the coast of Japan south-east to Bonin Islands, across to 165° west longitude.

Clark, “Fisheries and Fishing Industries of the United States,” vol. ii, p. 11.

In 1835 the first vessel visited what subsequently came to be called the “Kadiak ground,” situated near the island of that name, and defined as “extending from latitude 50° to 60° north, and longitude 130° to 160° west.” Here the right whale was the object of pursuit.

Ibid, p. 17.

The further progress of whaling in the North Pacific is summed up by Clark as follows:—

‘PACIFIC-ARCTIC GROUNDS.—The fleet of whaling-vessels cruising north of 50° north latitude in the waters between the Asiatic and American coasts, is called the North Pacific fleet. It has been the most important branch of

the American right-whaling fleet since 1835, when the famous Kadiak ground, lying between 50° and 60° degrees north, was discovered. Here was taken only the right-whale, but in 1843 the fleet pushed further north, and began capturing bow-heads on the Kamtehatka coast.

"In 1848 a whaling-vessel entered the Arctic in pursuit of these large animals, and meet with good success.

"In 1830 there were only two vessels in the North Pacific fleet. From that date to 1880 the total number of voyages made to these grounds by American vessels was 4,300, and the total catch of whale-oil (including oil of the right-whale, bow-head, and walrus) was 3,994,397 barrels, or 60 per cent. of the total production of whale-oil by the American fleet in all oceans during the same period."

"The North Pacific right and bow-head whale fishery has always been peculiarly an American enterprise, very few foreign vessels having participated in it. The principal grounds were discovered by American vessels between the years 1835 and 1843. The most important whaling-grounds for the bow-head in this region are the Okhotsk Sea and the Arctic Ocean."

Clark, "Fisheries and Fishing Industries of the United States," vol. II, p. 19.

It may be recalled here that it was in 1842 that Etholen, in charge of Russian America at the time, first complained of the operations of whalers to the north of the Aleutian Islands.

Referring to this period, Ivan Petroff, Special Agent for the United States' 10th Census, in Alaska, in his Report on the population, industries, and resources of Alaska, writes as follows:—

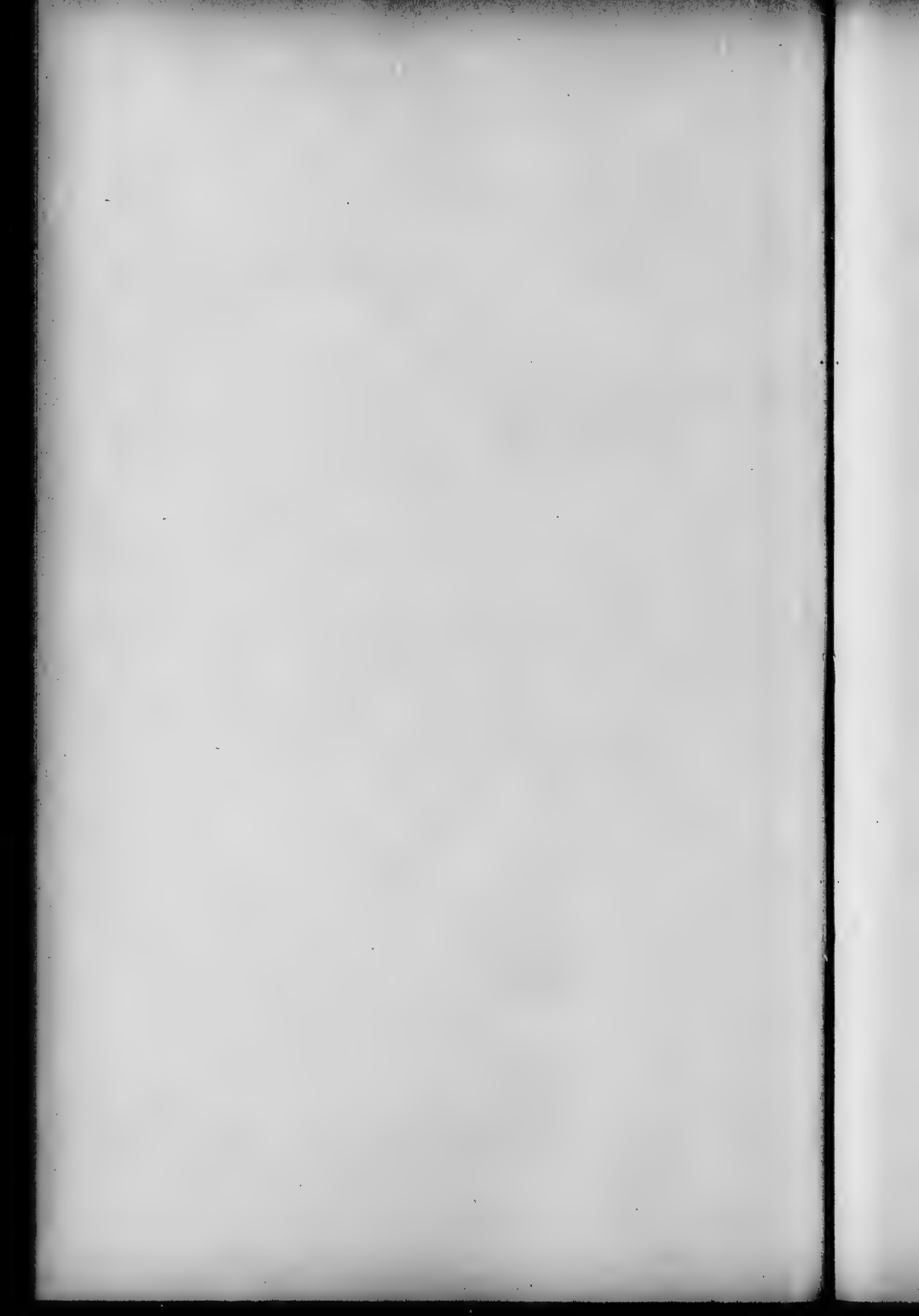
Ibid., p. 204.

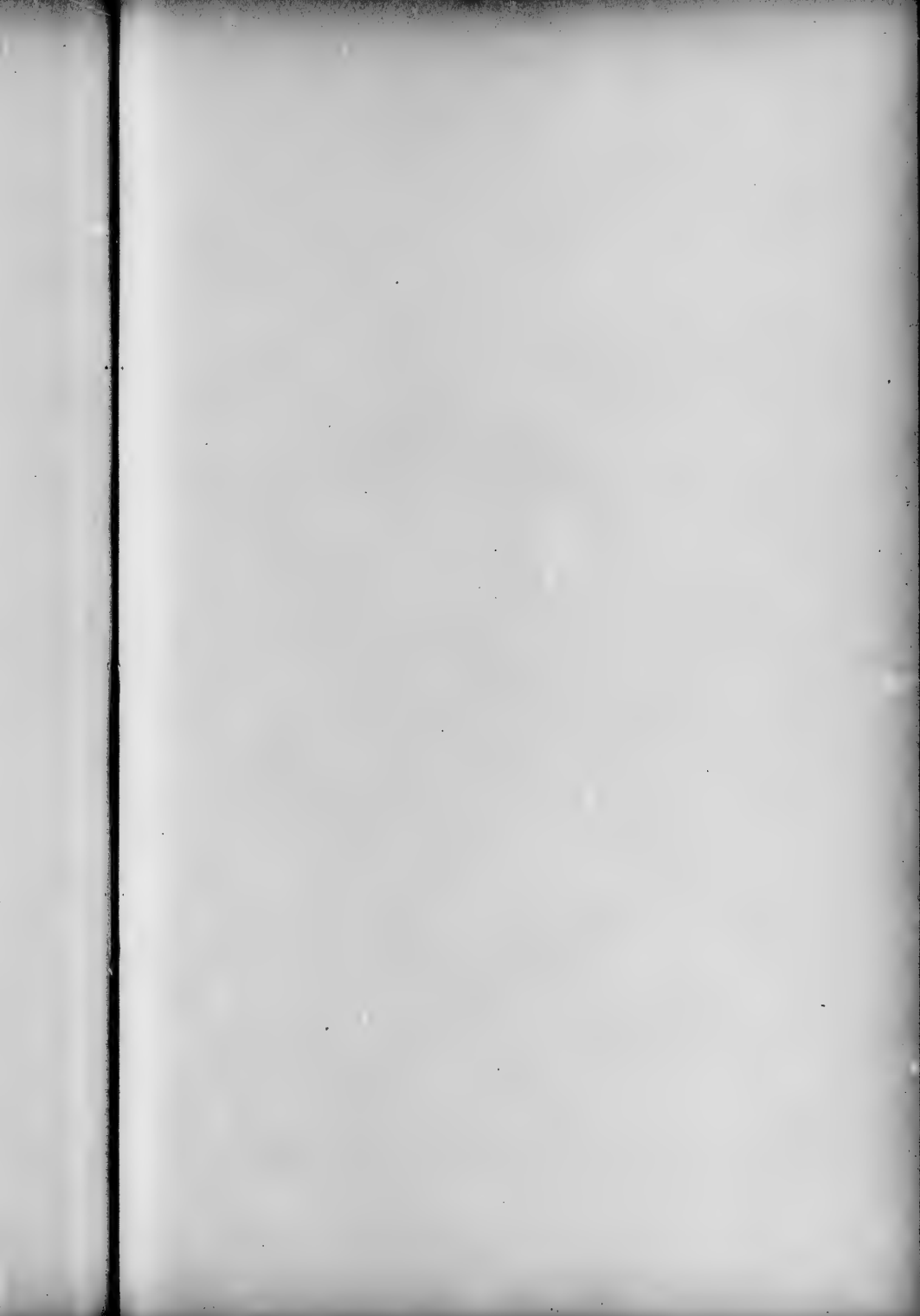
"Under the terms of the Treaty with England and America, no vessel of either of these two nations was allowed to hunt or fish within 3 marine leagues [*sic*] of the shore, but as there was no armed Government craft in the Colonies, the provisions of the Treaty were totally disregarded by the whalers."

Ibid., p. 20.

"The North Pacific whale fishery was at its height in 1846, when 292 ships cruized in the region north of the 50th parallel, between the Asiatic and American shores. In 1868 there were but 68 vessels in the fleet, of which number 41 were in the Arctic Ocean, 8 in the Okhotsk Sea, and 19 on the Kadiak ground. In the season of 1880 the fleet was reduced to 19 vessels, all of which cruized in the Arctic, and captured a total of 265 whales."

Without entering into further details with respect to whaling, it suffices to know that notwithstanding the natural jealousy of the Russian Company, and the inroads which the whalers made even on their fur trade, whaling was never interfered with by their Government. If any reservation had been made or understood with regard to furs in the





Conventions of 1824 and 1825, this surely would have been the occasion to strictly draw the line of right, but no such attempt was made.

Whaling was in fact but an incident in the free use of the North Pacific, including Behring Sea, and maritime enterprise for a time took that form, because this pursuit was the most profitable one. Whatever special claims Russia originally set up to this part of the North Pacific were in the first place in the interests of the trade in sea-otters. Whaling was next complained of by the Company controlling the territory, but unsuccessfully. The fur-seal was never a primary object in these earlier conflicts of interest, for the simple reason that the skins of this animal were then of comparatively small value. No other method of taking these skins was known but that of landing on the breeding places and there slaughtering the seals, a proceeding which, on the admission of any territorial claims whatever by Russia in the region, was manifestly illegal.

APPENDIX.

Pamphlet. 1830. London. Printed by F. Shoberl, jun., Long Acre. "On the Ambitious Projects of Russia in regard to North-west America." By an Englishman.

English pamphlet. 1830-63. (F.O. Library, 4157.)

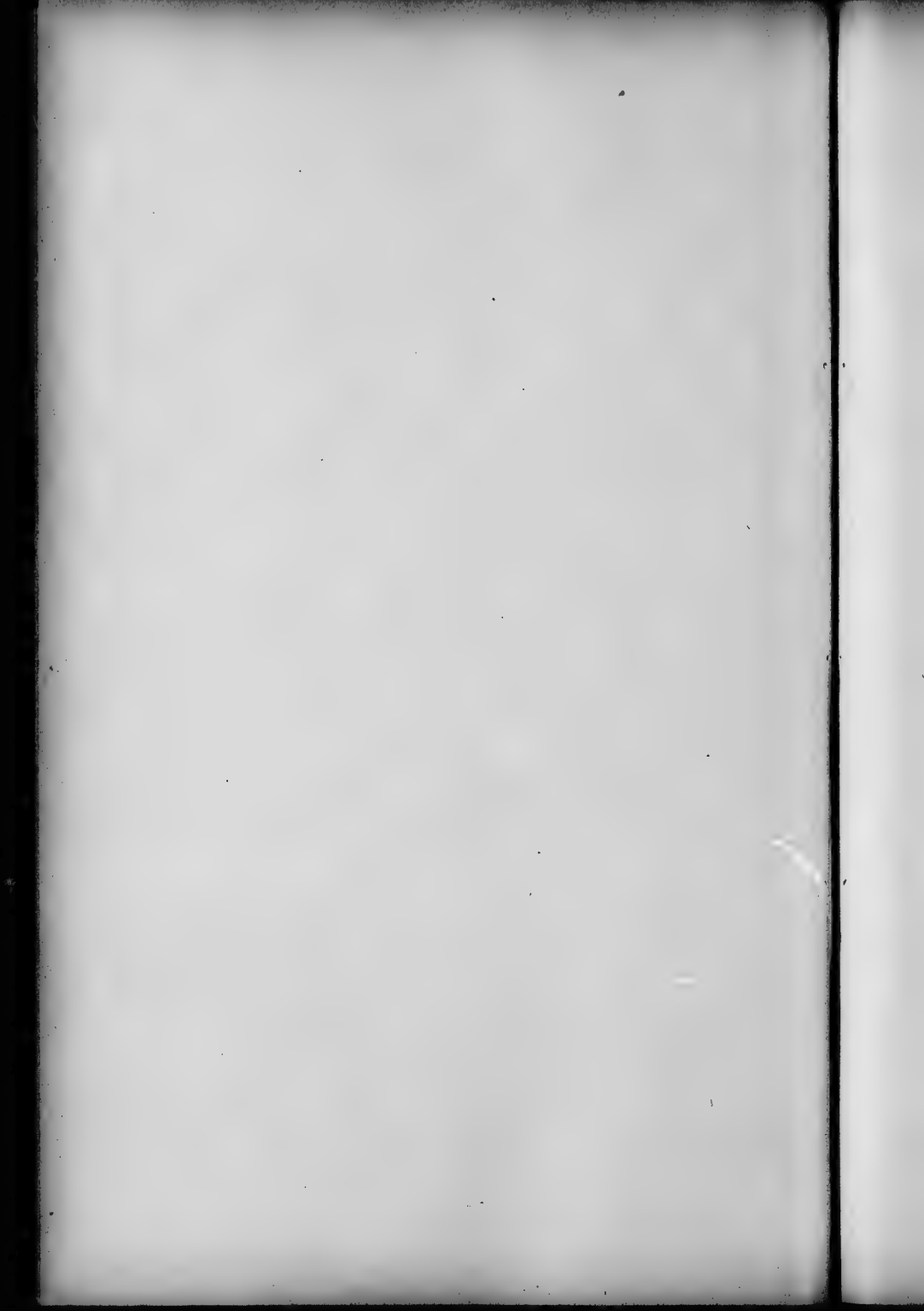
Sea-otters.

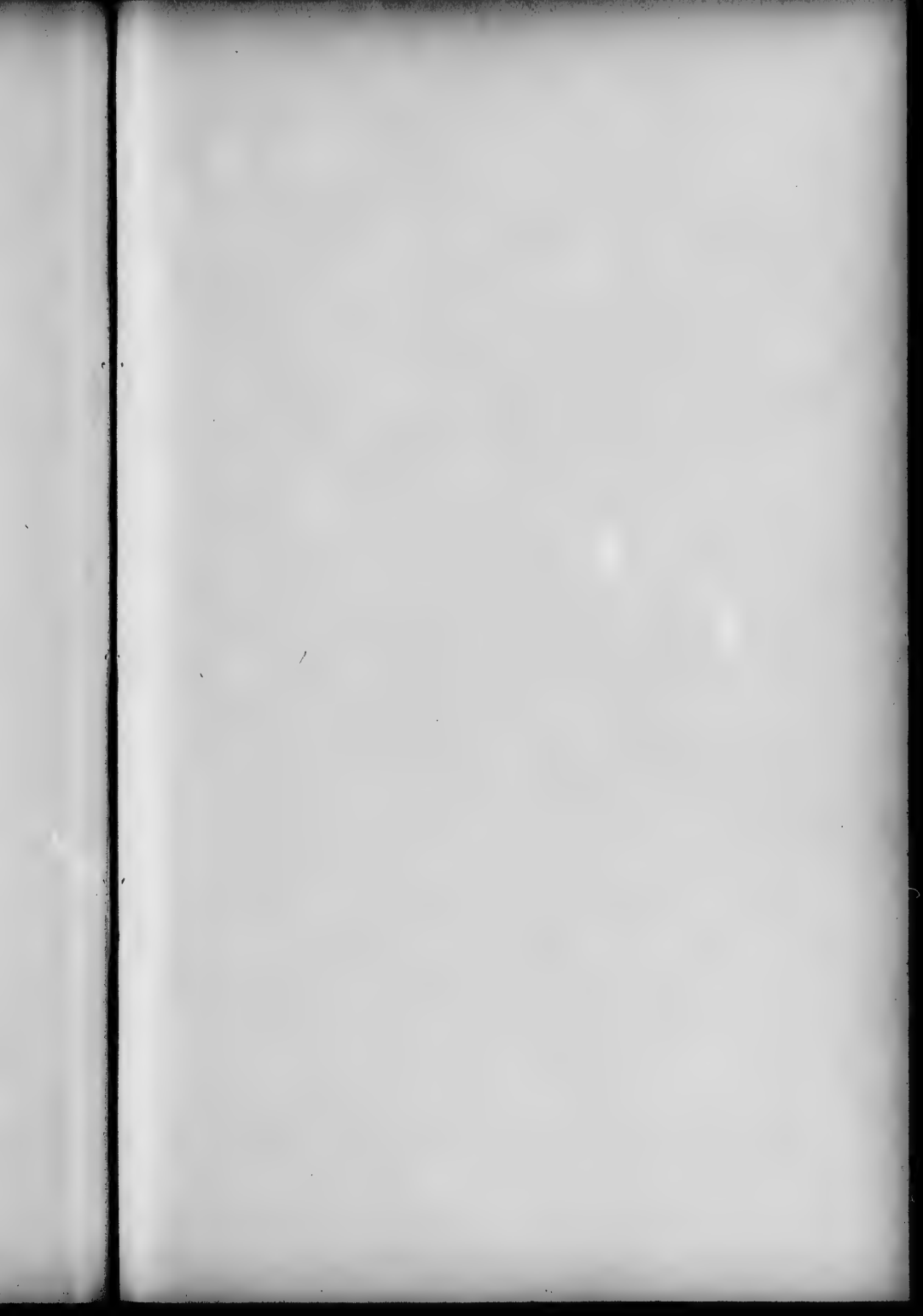
"Allured by the beautiful furs of these new-found regions, they repeated their excursions from year to year, and though many of them perished with their vessels, or were surprised and murdered by the savages, yet such was the profit obtained, chiefly from the skins of the sea-otters, that increasing numbers were ready to embark in the perilous pursuit" (p. 12).

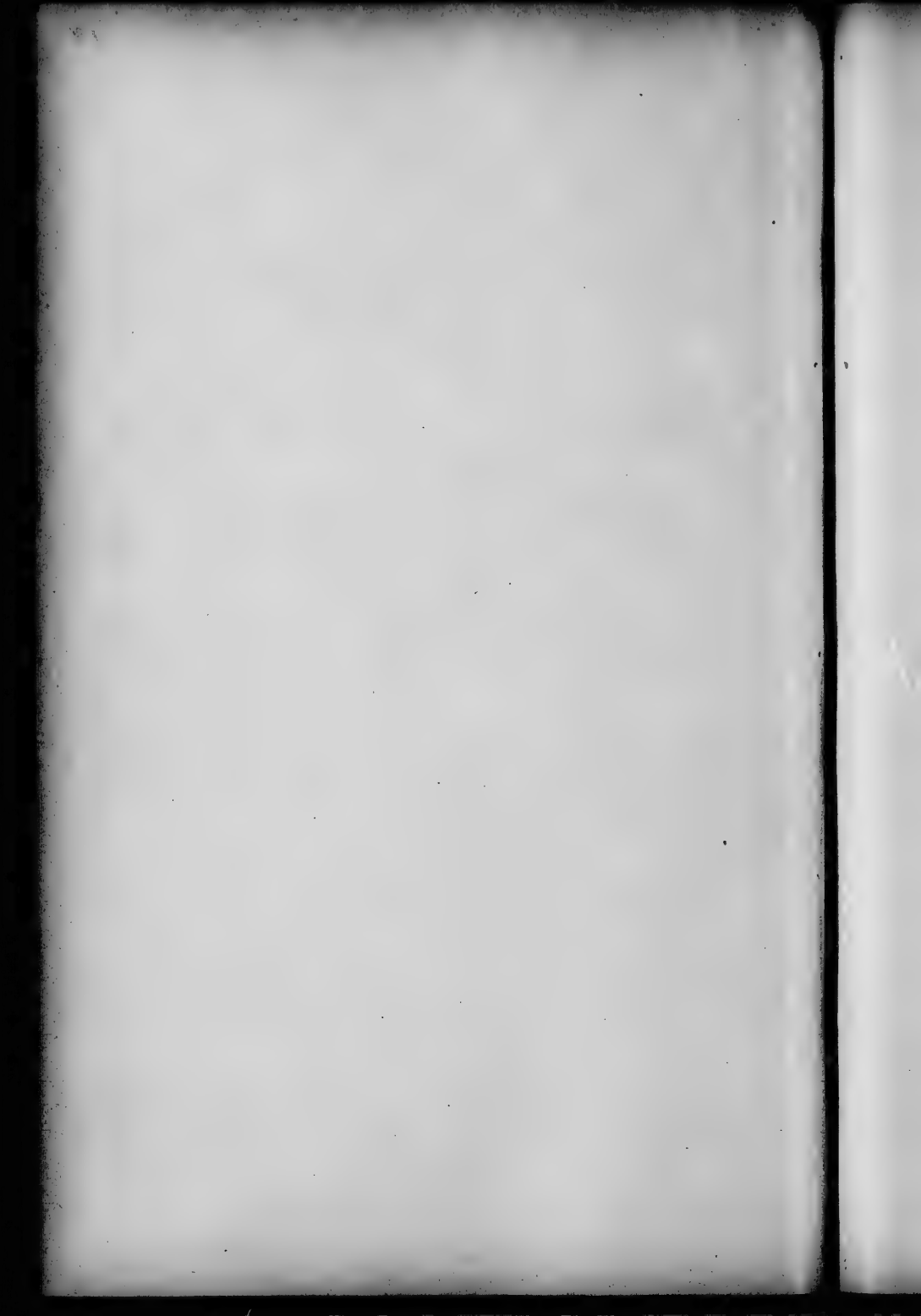
"The coasts of Kamtschatka formerly abounded in sea-otters, but the unrestricted destruction of these animals soon diminished their numbers to such a degree that the Company were obliged to go further in quest of them; for this reason they pushed on beyond the Aleutian Islands to the Island of Kadiac, situated near the American coast, and there fixed their principal establishment" (p. 13).

"The sea-otters taken by the Company's servants at this Settlement were at first a source of great profit, but those animals are becoming more and more scarce" (p. 15).

"The most valuable of the animals found here (Sitka) is the sea-otter, which inhabits only the north-west coast of America, between the latitude of 30° and 60°, is met with in smaller numbers on the shores of the Aleutian Islands, and formerly frequented the coast of Kamtschatka and the Kurile Islands. Its skin furnishes the finest fur in the world, which is highly prized both by Europeans and by the Chinese, and which rises in value from year to year with the decrease of the animal, that will probably soon disappear from the face of the earth, and merely figure as an embellishment in our zoological works. In China the skin of the sea-otter usually sells for 2 Spanish dollars" (p. 17).







HAIR-SEAL FISHERY, NORTH ATLANTIC.

Memorandum on Visit to Dundee and Peterhead in September 1892.

1. IN September 1892 I determined to visit Dundee and Peterhead with the object of seeing the sealing-vessels and their equipments, and learning by personal inquiry how far the natural history of the hair-seal agrees with that of the fur-seal, and as to the adequacy and effects of the Regulations for seal preservation set up off the Labrador and Greenland coasts respectively. I also expected to glean information as to the projected expedition to the Antarctic.

2. At both places I inspected the various vessels in port, and the "Arctic" stores, with all the implements, gear, &c., as also the tannery and "fur and hide" manufactory in Dundee.

DUNDEE.

3. In Dundee, among those who gave me much detailed information were Mr. W. Stephen, the proprietor of the tannery; Mr. Kinnes and Mr. D. Bruce, managers of whaling and sealing fleets; Captains Fairweather, Guy, Davison, and Robertson, well-known whaling and sealing masters; and Messrs. Leng, M.P., and Malloch, of the "Dundee Advertiser."

4. Among miscellaneous items I noticed that the club used for killing seals has a double head of iron, with flat chisel-shaped striker for killing, and a curved pick for hauling the carcasses on the ice. The staff is slight, and about 5 feet in length. The skins are salted. The old seals average 10s. per hide, and the young "white coats"

from 5s. to 7s., these latter being dressed as furs. In Mr. Stephen's factory is made excellent leather for saddles, shooting-boots, harness, upholstery, and fancy goods out of seal and beluga skins. The "white coats" also are dressed into very serviceable furs, known as "Greenland fur," and selling for one-tenth the price of "Alaska fur." Mr. Stephen explained that furs did not become an article of common use in England till twenty years ago.

5. In regard to North Atlantic experiences, I learned generally that the Regulations set up for the *Newfoundland* fisheries have yielded excellent results, especially because the close time has both a beginning and an ending. Seals are as plentiful as ever.

6. Off the coast of *Labrador* the sealing is carried on when the seals come out on the ice to breed at a certain date in the spring, after which they go travelling to feed right up to Davis Straits and Spitzbergen, perhaps 1,500 miles away. The females are served within a month after pupping. The pups suckle for about ten or twelve days, and after that their mothers hurry them into the water for fear of the hunters, and their growth being phenomenally rapid—"you can see them growing"—they at once begin to live on what they catch. Captain Davison and others were absolutely "sure" that they do not suckle longer than this. There is no killing at sea whatever.

The skin with the blubber jacket is taken to St. John's, Newfoundland, where the blubber is tried down by heating, and the oil shipped with the salted skins to England, where the latter are dressed. The refuse salt, full of oil, &c., is in great request for farmers.

7. In regard to the *Greenland* fishery, chiefly around the Jan Mayen Islands, all were agreed that the International Regulations were set up when too much damage had already been done by excessive and indiscriminate slaughter, and in addition that a chief cause of damage now is the fact that, owing to the opposition of the Norwegians, no close was fixed for the fishing season. The consequence is that the fishery is now practically worthless, and commercial extermination has supervened. Norwegians and others continued hunting and shooting the old seals at sea. Early in the year, when the seals are fat, they float after being shot. You can

secure them even after firing from the ship, as there is plenty of time to lower a boat; but later on in the season, when they have lost their fat, probably not one in three that is killed is secured. The seals obtained at sea are usually females, and about 2 years old, as these "lie" best.

8. With regard to Dundee sealers, the usual practice is to go to the sealing-grounds early (in March and April), and then discharge the seals at St. John's, Newfoundland, and then go up whaling in Davis Straits, &c.

9. In regard to the Regulations, there is no need whatever for any police, because it has been found in experience that all watch each other jealously, and that with such numerous crews no infraction of the Regulations can long remain unknown.

10. "White coats" (pups) first became of value when Mr. Tussaud (a nephew of Mme. Tussaud) invented a process, by means of plaster of Paris, of keeping the hair in position while the skin was removed and india-rubber substituted, thus making an artificial fur. But this process has now been abandoned.

11. In reference to the *Antarctic*, I found that, in consequence of the disturbance of whaling in the North Atlantic, chiefly owing to the more general use of steam, which scares all the "right whales," it was determined this year to dispatch four whalers to follow in the track of Sir James Ross' third voyage, with the especial object of discovering whether black whales were to be found in any numbers, and whether they produced sufficient whalebone (whalebone having gone up in price from about 400*l.* per ton fifteen years ago to 2,700*l.* in 1892). In Dundee it is sold chiefly to wholesale drapers.

12. These four vessels are to rendezvous at the Falkland Islands, and then proceed towards Enderby Land, while a Norwegian vessel, the "Jason," is to hunt down the coast of Graham's Land. They expect to be away eight months, returning in June or July 1893. Two medical men accompany the expedition, and will make a variety of scientific observations.

13. All very willingly promised me to collect actual specimens of animals, and especially to look out for fur-seal, and if they find frequented rookeries, they intend to take possession of the territory, with the view to establishing a breeding-ground, and making permanent profits by

4
excluding others and preventing indiscriminate slaughter.

14. They all agreed that the use of steamers scares whales. More than one of the captains described that on a calm day, the very day for whaling, he has been among the whales with every prospect of great success, and got his boats out. But some whaler spies this from his crow's-nest, and comes steaming down, when the whales at once disappear "as if my magic," owing to the thuds of the engine. The same effect has been noticed as the Norwegian steam-sealers pass to and fro over the whaling-grounds in Davis Straits.

At one time all the captains agreed never to use steam while on the "grounds," except for some urgent necessity. But individuals were always discovering reasons of urgent necessity, and so the mutual understanding came to be abandoned.

PETERHEAD.

15. At Peterhead I went over the vessels and stores, and learned a great deal from Captain David Gray (the most successful of the sealing captains) and Captains Salmon and Murray.

16. *Captain Gray* gave me full information on many points. He said that the chief value of a seal was its blubber and hide, but that an additional incentive had been added when *furs* came into general wear twenty or twenty-five years ago for ladies' dress. Thus, twelve years ago, the skins of the "white coats"—the grey pups—came to have a value of from 3s. to 7s. for making up into a fur known as "Greenland seal." He saw some at Whiteley's, and was told by the attendant they were "Royal fur." The Royal Artillery busbies are made of it. Some years ago a Mr. Tussaud took the hair off the pelt and fixed it to india-rubber; but there was an unpleasant odour, and so it never succeeded commercially.

The skins are much used as hides, for furniture and saddles. Females are preferred, because the males are so much torn and lacerated by perpetual fighting.

17. In regard to the seals themselves, the bulls are about the same size as the females, but with different shaped heads. The females get out on to the ice first, and drive off the males until they have had their pups, usually about the 20th to 22nd March. They suckle up till about the

10th April, and would suckle for fifteen to eighteen days, but the hunters come along, and the pups are hurried into the water, where they manage to feed themselves within three weeks of birth. Has seen miles of black pups on edge of ice. After suckling, they are "as fat as pigs, and full of cream," on which they live till they become quite thin, and then they take to the water.

All coition takes place in the water. "Never seen but one case on the ice; have seen thousands in the water." After bearing pups and serving, the mature females and males lie about on the ice for six weeks without eating—from the 25th April to the end of May. "The female begins like a fat woman, and gradually gets to look like an eel." Both sexes get very thin. At last they go away for all the summer 1,000 to 1,500 miles—all the way up to Spitzbergen and Franz Joseph Land and up Davis Straits. He has found seals in Franz Joseph Land with Labrador slugs in their skins. When a nursing mother comes along all the pups go to her, but she bites and scratches at them, and will only allow her own to suckle. In regard to getting seals when they are on the ice and get scared, they crowd along the edge, and you will only get two out of three shot, because they dive and sink. Has seen any number of dead seals floating about. Never shoot at sea, because they would sink.

18. In regard to the industry, it began in 1787 from Peterhead. In 1806 there were fifty-two vessels, taking 104,000 seals. Thirty years ago (1860) there were twenty-eight to thirty sail of from 100 to 300 tons. Captain Gray showed a carefully kept list of all vessels, with their catches, &c., sailing each year from Peterhead. Used to get an average of 5 to 20 whales, and from 1,000 to 15,000 seals, on a lucky voyage. Before the Regulations were first instituted they were getting 180 tons of oil per ship, but they regularly killed lots of mothers in pup or nursing, and the pups were left to die. There ought to have been a day fixed for closing the fishery.

19. As for police, no one did wrong, because every one would peach. Has seen all the vessels waiting along the ice till 12 o'clock, and then all begin with a great rush.

20. Steamers have scared whales effectually; they never seem to get used to them; when

steamers have gone south, then the whales are out again to sea.

21. *Captain Salmon*, another successful Peter-head sealing captain, told me much, especially in a long private conversation. Generally, his statements were to the following effect:—

The breeding males and females arrive about the same date at the ice, and copulation takes place very soon after the pups are born. Thinks it probable that after ten or twelve days pups are done with suckling; they are then full of milk and fat, and go off and crowd together on edge of ice for many days. They live on their own fat, and gradually get thin, and from the 10th to the 20th April they begin to take to the water and to feed themselves.

22. The shooting in the water is easy at the beginning of the season, because they are fat and do not sink. They are often shot then in the water; it depends on the particular season whether they are shot on the ice or in the water most; but even on ice two wounded seals get away for every one that is taken. They dive and you do not see them again. Has "picked up a good few dead ones" in early part of season which had been shot by others and floated up because fat. Has seen some floating dead because "blown out."

Early in the season nearly all that are killed are females. Later in the season they are males.

23. As to summer migration, he has seen lots of seals from Newfoundland up in Cumberland Gulf and the fiords in Davis Strait—the water alive with them, but they will not let man get near them. Some sort of small white fish entices them up there.

24. Natives in Cumberland Gulf have curious method of taking seals. Has often been out with them himself and seen it. The seal while ice is forming makes in the ice a cavity with shelf for new-born young, and hole for exit into the sea below about 1 foot below surface of sea, making a small breathing-hole in ice above. The natives take a dog who scents the breathing holes, and shows whether seal there or not. Native approaches suddenly and jumps on ice, breaking through into cavity, the broken ice blocking the exit hole below. Often the old seals have not time to escape, and the pups are always captured.

25. *Captain Murray* gave much interesting information from his experiences.

In regard to seals, in shooting them on the ice, you cannot get much nearer than 50 or 60 yards, unless, like the natives, you crawl up clothed in a skin to within 10 yards. All depends on the first shot you fire, as at the shot all the seals look up, and if the one aimed at drops dead, others lie down again; but if he is only wounded he is off and dives, and so do all the others. Has seen seals on ice up to July, and even August, but after May they get wilder and wilder, and you cannot get near them. In shooting seals on the ice you do not get on the average more than one in three hit.

26. The hooded seal and floe rats do not eat while they are on the ice in June and July. Has never seen any dung on the ice occupied by them. The harp seal certainly eat, especially at night. In May and June has seen whole ice space one mass of dung, like cow-dung, with white shrimps, their favourite food, and fish remains, all over the floe.

Has seen lots of dead seal floating; gets them sometimes. Birds tear them and eat them floating, and so do sharks.

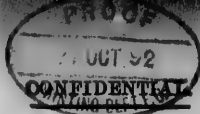
27. Steam takes whalers and sealers up so early and certainly that they can destroy all mothers and pups; best if no steam allowed.

GEORGE BADEN-POWELL.

September 1892.

T
se
of
m
p
e
th
t
se
e
o
a
s
t
p
t
t
o
p
h
o
o
P
o
a
s
n
T

t
t
a



J. Veniaminoff: "Notes on the Islands of the District of Unalaska."

St. Petersburg, 1840. Part II, pp. 349-382.

THE fur-seals are a species of amphibious animals, very like the ordinary seals. The ordinary fur-seals (not the big males) are a little bigger than the large kind of seals. Their hair is silvery grey in colour, soft, and has an undergrowth of down.

The fur-seals are only found on the Pribyloff Islands, and especially on the Island of St. Paul.

The fur-seals may be considered domestic animals,* because, however much they may be disturbed by the sealers, they invariably return in spring to their breeding-places. And it may be stated as an absolute fact that, except from special and extraordinary causes, the fur-seals never give up the places they frequent, and, like the sea-otters, never go to other places. This is proved by their having returned to their old haunts every year for more than fifty years.

The fur-seals may, therefore, be considered one of the surest and most important sources of revenue in this part of the world, provided that proper regulations are enforced in the exercise of the industry.

The fur-seals are becoming more and more valuable, for they are already considered one of the rarities of the world. Fur-seals used to be found in California and in South Shetland, but there are now none in the former country, and there will soon be none in the latter, so that there will be none anywhere except in our part of the world. Common sense therefore demands that we should do all in our power to prevent the extinction of the fur-seal species, while deriving all the profit we can from the industry.†

The seal-hunters divide the fur-seals into five classes. The first are the *sekatsh*, the second the *half-sekatsh*, the third the *bachelors*, the fourth the *cows*, and the fifth the ordinary so-called *kotiki*, or *grey fur-seals*.

The *sekatsh* is the full-grown male, not less than 5 years old, who already possesses several females. He is more than three times the size of the female. His hair is dark grey, and longer from his head to half-way down his body than on the other parts of the latter.

The *sekatsh*, being the strongest of all the fur-seals, is the guardian and protector of the herd against enemies, on whose approach he gives a signal to the rest by a peculiar cry, and tries to keep the seals together and in order.

The *half-sekatsh* is a male 4 or 5 years old; his hair is a little lighter than that of the *sekatsh*, and his mane is also long. He, too, is a full-grown male, but young and without females, because, not being so strong as the *sekatsh*, he cannot resist him and have females.

The *bachelors* ("kholost'ki") are the 2- and 3-year old males. The last year's males are also counted as bachelors, and are known as *young bachelors* ("kholostiats'ki"). The bachelors have no mane, and their hair is light grey, especially in spring.

The *cows* ("matki") are the females capable of bearing young. Their hair is almost

* All kinds of domestic animals require to be looked after and cared for before they can be made use of; in the case of fur-seals, however, it is necessary not even to come in sight of them until the time arrives for taking them.

† I have had much better opportunities for collecting information about the fur-seals than about other animals, and I therefore devote more space to them than to the others.

identical in colour with that of the sekatch, but is sometimes of a greyer, sometimes of a redder shade. The cows are two and a-half times the size of the ordinary kotiki.

The *kotiki*, or grey fur-seals, are the 4-month-old males and females born in spring; it is almost exclusively from this class that the skins for commerce are taken. Their fur is better than that of any of the other classes. The fur of young sea-lions is often very like that of the *kotiki* in colour, but the sea-lions have no down at all, and their hair is coarser and shorter.

The fur-seals do not always remain on the Pribyloff Islands; they arrive for the summer from the south, generally during the prevalence of south or south-west winds; as already stated, they generally pass through the Unalaska Straits, both in coming and going. No one knows as yet where they come from, or where they go to for the winter. Perhaps this will long remain a mystery. The sekatch always arrive first, braving all obstacles; they land even if the rookeries are covered with ice and snow, &c. Some time between the 18th and 23rd April the first sekatch may be seen on the shore, each on the spot which he occupied the year before.*

After them come the half-sekatch and bachelors; these do not always go to the places they occupied the year before. The bachelors, having rested after their journey, go into the sea in search of food, and lie down in other places. They constantly change from one place to another in the course of the summer; but when they come on shore they always lie apart from the sekatch, and further from the shore than these; the reason for this is that the sekatch, from jealousy, will not allow them to come near the herd.

From the 26th May (or, very rarely, from the 21st May) the cows begin to arrive. They do not come on shore at once, or without carefully choosing a place for landing. The cows continue to arrive, or rather to appear off the shore, until the 20th June. Probably they all approach the islands together, but only those of them land which are about to have young. It is known for certain that the cows will not come on land, even to their own breeding-places, if for any reason there are no sekatch there. As soon as the cows approach the shore the sekatch call them to them with a peculiar roar. The cows give the preference to places where they have been before, and to the most active sekatch. When the cow comes out of the sea the sekatch greets her with caresses.

It has been ascertained, by noting particular marks on the bodies of certain fur-seals, that the animals always return to the same rookery. As additional evidence of this fact it may be stated (1) that the hair of the fur-seals frequenting the Island of St. Paul differs (of course only to an experienced eye) from that of the fur-seals of the Island of St. George, and that the fur-seals always return to the place where they were born; (2) that, even at the time when they were most numerous, the fur-seals never took possession of the small islands close to their rookeries, although these islands would, to all appearance, have been more convenient for them than their rookeries.

Every sekatch tries to get possession of as many cows as possible, and, to attain this end, adopts various expedients; the sekatch call out to the cows, try to frighten them, drag them about holding their manes in their teeth, take away cows from each other, and sometimes even have recourse to stratagem, stealing the cubs, and thus forcing their mothers to follow them.

The number of cows belonging to a single sekatch now varies from 10 to 150 according to the activity of the sekatch and the attraction he possesses for the cows. In former times one sekatch would sometimes have a herd of from 500 to 700 cows. Some sekatch have no cows at all, and these do not remain lying on the shore for such long periods as the others.

When the sekatch arrive at the islands they are extremely fat, and, until the arrival of the cows, they are nearly always asleep, and their voices are never heard. From the time of the arrival of the cows until they have impregnated them all, the sekatch never leave the shore except it may be to meet a newly-arrived cow, and apparently they never sleep, for if they did their cows would disperse. The guard they keep over the cows is so strict that they will not allow them to move a yard from them until the time comes for them to have young; as soon as a cow has had a pup she is allowed to go into the sea to get food, and while she is away the sekatch keeps careful watch over her pup, to see that it does not join other herds.

During the whole period that the sekatch are on shore with the cows they eat nothing whatever, nor do they drink. Sometimes on hot days they will drink seawater, but not to quench thirst, because, as has often been observed, they bring it

* This has been verified by observing particular sekatch, which had some special mark on their bodies.

up again in white foam within an hour or less. It is no wonder that, after such a period of watching and fasting, the sekatsch are extremely weak and thin.

The fur-seals never stop screaming day and night. Their cry, especially that of the pups, is very like the bleating of a sheep. It has been noticed that they scream louder in bad weather.

The fur-seal rookeries are always on stony shores sloping gently to the sea.

The cows begin to have pups about the 30th May, and go on all through June. Some have been known to have young so late as the 10th July. The cows generally have only one pup at a time. When a cow has two, she generally dies. No assistance is given to a cow when giving birth to a pup, nor is she interfered with in any way. It is believed that foxes sometimes carry off new-born pups, because seal-skins are often found in their dens; however, these may be the skins of pups which were born dead, or which have died soon after birth. Cows sometimes give birth to dead pups, and sometimes pups are crushed by the sekatsch in their pursuit of the cows.

Some cows have no pups, but nothing certain is known on this point. There are few such cows in ordinary years. Of late years, one season, that of 1832, has been remarkable for the number of cows which were without pups; this circumstance is believed to have been due to the fact that the ice of the year before remained unusually long round the shores of St. Paul's Island, and prevented the cows from landing; consequently, many cows had pups on the ice, and, not arriving on shore in time, were not impregnated.

There are three very important points in connection with the cows which still require to be cleared up, viz. :—

1. At what age do the cows first have young?
 2. Do they have young every year?
 3. How often in the course of their lives do they have young?
- All that can be said on these points will be said below.

The sekatsch does not impregnate the cow immediately after she has had young; he lets her alone and allows her complete liberty to go into the sea for several days, in all probability until she is completely purged.

Before coition the fur-seals, like other animals, indulge in caresses, which continue for some time. The actual copulation generally lasts about twelve minutes. When a cow has been impregnated the sekatsch ceases to watch her or her pups.

Although the sekatsch is very much larger than the cow, no instance is known of a cow having been crushed by a sekatsch during copulation. But it happens pretty frequently that bachelor sea-lions have connection with fur-seal cows (always against the will of the cows), and in that case the latter are often crushed by the weight of the sea-lions; if the cow survives, she gives birth to a mongrel, having the head, paws, and hair of a sea-lion, and the down of a fur-seal.

A fur-seal sekatsch will sometimes have connection with as many as twenty-five cows in the space of twenty-four hours.

A sekatsch does not have connection twice with the same cow; but the half-sekatsch and young sekatsch violate some of the impregnated cows, and it is probable that it is these cows that give birth to twins.

The male fur-seals are extremely jealous and fierce at this period, which is the time when fights most frequently take place between them.

The pups take no nourishment except their mothers' milk from the day of their birth until they leave the islands; they never take the milk in the water, but always on shore. A month after their birth, and no earlier, they begin to go to the water's edge and to paddle amongst the stones. Having thus gradually got accustomed to the water, they have become good swimmers by the month of August, and are able to go out a long distance from the rookeries; they then begin to leave their mothers, sometimes for a whole day, and swim about in the sea or lie in some warm sheltered place, only returning home for milk; the mothers go in search of them if they do not return home by the evening.

In some years, in the month of September, the young fur-seals form *otbors* (as they are called in the Pribyloff Islands), i.e., they collect in large numbers at certain places and lie about keeping no watch, so that it is easy to capture the whole herd. These *otbors* are very advantageous to the sealers, but interfere seriously with the propagation of the species.

The idea of some people that the fur-seal cows teach their pups how to swim, and in so doing hold them in their teeth, &c., is quite erroneous. It is only the sea-otters that do this. But it is a well-known fact that, before the fur-seals leave the islands, the cows teach their pups how to escape from an enemy. To practise this, they raise

false alarms. For instance, while the mothers are lying on the shore with their pups, no enemy being in sight, they will suddenly cry out and make for the sea. Those of the pups who understand follow their mothers, while those who do not understand only cry out and remain on shore. The mothers come back to these latter and repeat the manoeuvre.

The fur-seal pups are black at their birth; this makes them look, from a distance, very like little puppies. About the middle of August they begin to turn grey (the ordinary colour). This change in the colour of the young fur-seals does not arise from their hair turning from black to grey, but, as in the case of nearly all animals, the original hair gradually falls out, beginning from the forepaws, and makes way for the new silvery hair. At this period (while they are casting their hair) they keep scratching themselves. The length of the time required for the change to be accomplished varies; some years it takes place earlier, some years later. It sometimes happens that large numbers of fur-seals leave the islands without having changed their hair.

The young fur-seals, until they begin to learn to swim, lie in groups near their mothers. The sekatch have never been known to bite them.

The young seals of the previous year, *i.e.*, the males and females which have not been killed during the previous season, are no larger than the young 4-month-old seals; they can only be distinguished by their greater activity and sagacity, and by their figure, which is more slender and graceful. Till the month of September they always lie in the herd with their mothers, and often leave the shore to look for food.

At this age the young fur-seals are wonderfully playful; they never stop playing all the time they are on shore. They turn somersaults, bite each other, drag each other into the water, splash about, &c.; sometimes a young seal will scramble with great difficulty on to an outlying stone merely for the purpose of dragging from it a sleeping companion, and falling into the water with him.

The killing of the seals begins about the 28th September; a time is chosen, if possible, when wind and weather are favourable. The best weather for the purpose is when, after two or three wet days, fine clear weather sets in, or, at least, the rain stops. At such times the fur-seals lie quietly on the shore and rest, because during the wet weather they are constantly going into the sea, and cannot long remain lying on the shore. The wind most favourable to the operations is that which does not carry the scent of the sealers to the fur-seals.

Having chosen a time when wind and weather are favourable (any hour of the day will do), all the inhabitants, of both sexes and all ages, having armed themselves with *dregalki*, *i.e.*, short sticks thick enough to kill a seal with, form a chain, and proceeding along the shore where the seals are lying, drive them all inland. After driving them a short distance, they stop them, and begin to sort out the cows and sekatch (these latter are very rarely found amongst the seals driven in) from the young seals; the old cows, which have already had experience of a *battue*, make off of their own accord the moment they see a chance of getting to the sea; the young cows have to be driven to the sea by force. Sometimes it is found to be impossible to drive a cow away from the place where her pups are; in such a case she has to be driven with the rest to the place of slaughter. When the slaughter of the seals begins some of these cows try to protect their pups, and lie over them for a long time, so that force has to be used to drive them to the sea. It is said that tears are sometimes seen in the eyes of these cows.

After the cows and sekatch have been separated from the rest of the herd, the latter is divided up into small groups, which are slowly driven to the place of slaughter, which is sometimes as much as 10 versts distant. It is very difficult for the fur-seals to go so far. They cannot cover this distance in one day, because they are so built that they can only jump. For this reason they are often stopped and made to rest. The moment they stop they fall asleep from fatigue. The young fur-seals get along more easily in cold damp weather than in dry clear weather.

When the fur-seals have been driven to the place of slaughter, they are allowed to rest for an hour or more, because if they are killed while heated their flesh has a peculiar taste and is no good for salting; after the rest the sealers begin to kill them with the *dregalki*. The little pups, born during the year, are all killed without distinction, females as well as males; but of the animals born the year before only the males are killed, according to the Regulations now in force, while the females are, if possible, driven back to the sea.

Even children are able to drive the fur-seals to the place of slaughter, and to kill

them, such is their meekness, helplessness, and submissiveness. The sealers say that not every man finds it easy to raise his hand to kill these innocent creatures, whose only crime is to possess a fur.

Circumstances sometimes make it impossible to skin the dead fur-seals for four days or more. It is found that the skins begin to rot sooner if taken off the seals and left in a raw state than if left on them.

The skins are taken off and cleaned by men. One man can deal with 50 to 200 skins a-day. They are then handed to women, who stretch them on wooden frames, two on each frame, the fur on the inside. They are then dried in a drying-room heated with stones. The *banshtshik*, or overseer of the drying-room, must be a person of great experience and skill, otherwise the skins may be burnt or singed. When prepared the skins are tied up in bundles of fifty, and in due course dispatched to their destination. A portion of the flesh is prepared to serve as food for the inhabitants of the other Settlements, but the greater part is hung up on *labasa*, or screens, for use in winter. The entrails and the rest of the flesh are heaped up to be used for fuel.*

After the *battues*, which are sometimes organized as many as three times in the same place, the cows wander about the shore for some days calling for their young with pitiful cries.

After the first *battue* the fur-seals lie very near the water, and are very watchful. Some of the sleeping cows which have been awakened by the sealers driving the herd from the shore have been known to tremble all over, probably with fear, and then die.

The sekatsk finish what they have to do about the middle of July, and then leave the herd and lie in solitary places, where they either sleep or go into the sea in search of food.

The fur-seals begin to leave the islands not earlier than the 3rd October, and choose favourable winds for starting. North-westerly and northerly winds are the most favourable for the seals' departure, as these winds are with them. Before starting the big fur-seals are more on shore than in the sea, while the little ones are more in the sea than on shore. After the first *battue* the big seals, i.e., the females and bachelors, often collect in large numbers on rocky headlands as if to take counsel. The little seals which have escaped from the *battue* generally return to the places where they were born.

By the beginning of November hardly a single fur-seal is to be seen in the neighbourhood of the islands, with the exception of a few sekatsk. These latter sometimes stay till the end of November, and even till December. It has been noticed that although they sometimes come on shore, it is only for a very short time. No fur-seals have ever been seen in January or February. One sekatsk was, however, once seen in February, and one in March 1832 on St. Paul's Island. They came on shore for a short time and then disappeared. Since then, so far as is known, no seals have ever been seen during those months.

We must now consider the question: *Where do the fur-seals go for the winter?* Before the Seal Islands were discovered, hunters living on Unalaska noticed that the fur-seals, returning in autumn from the north, spent some time in the northern bays of Unalaska, Akuman, and Akun, where the Aleuts hunted them; but as soon as winter approached the fur-seals went south through the straits between Unalaska and Unimak, and especially through the Unimak Straits.

After the discovery of the Pribyloff Islands, and when fur-seals had begun to be taken there, these animals were seen less and less frequently in the bays of Unalaska, and at last, about 1815, not a single fur-seal was to be seen in the whole district of Unalaska, and at the same time it became impossible to observe the periods at which they went north and south, and the straits through which they went.

We must not conclude that the fur-seals have ceased to migrate because they are no longer seen, and because sekatsk have been observed in November and December; such sekatsk were seen now and then at the time when the migrations could still be observed, and when the fur-seals still visited Unalaska. Where, then, do the fur-seals go for the winter, and where do they remain from November to April? There are none of them round the islands of the district of Unalaska, or anywhere on our American coast. Do they go to California? But, according to M. Khlebalkoff and M. Shelikoff (Head of the Ross, and afterwards of the Sitka establishment), the Californian fur-seals are quite different from the fur-seals taken on the Pribyloff

* The entrails, flesh, and bones kept in a heap rot during the winter, and turn into something not unlike peat.

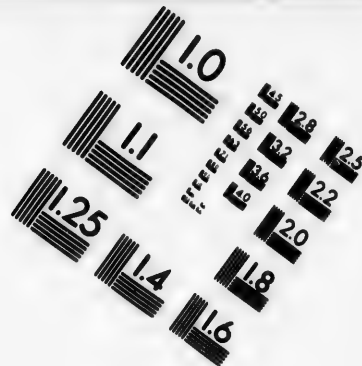
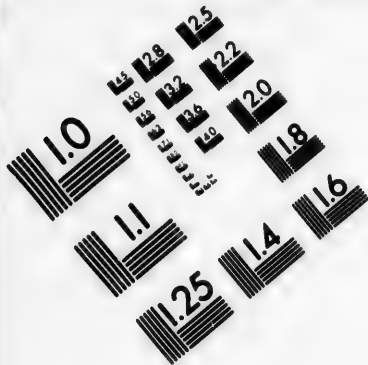
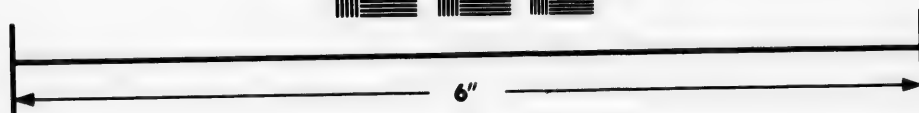
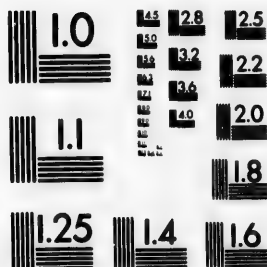


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

28
25
22
20
18

10
11
12

Islands, and, moreover, there have been no fur-seals in California for the last five years. To Now Shetland? But, in order to go there, they would have to swim more than 7,500 miles each way, and the journey would have to be performed in five months or less, i.e., they would have to cover not less than 200 versts in every twenty-four hours without resting. This is evidently impossible. If we are to suppose that the fur-seals leave the Pribyloff Islands only on account of the approach of winter, and pass the winter in the sea, why do they chiefly pass through (or why used they to pass through) the Straits of Unimak, when their shortest way south through the Aleutian chain would be by the Tshetyriokhsopotahny and other straits?

We will now consider the measures to be taken to increase the number of fur-seals, or at least to prevent the extinction of the species.

From the time of the discovery of the Pribyloff Islands till 1805, i.e., till General Bessanoff came to America, no account was kept of the number of fur-seals killed, and no control whatever was exercised in the matter, owing to the fact that there were a number of Companies engaged in the industry, and therefore many masters, each of whom tried to take as many seals as possible. But Bessanoff, seeing that this state of things must inevitably lead to the extinction of the species, gave orders for the killing of seals to cease; consequently no fur-seals were killed in 1806 and 1807 on the Pribyloff Islands, and all the persons employed in the industry were taken to Unalaska. The killing was to commence again in 1808, but, owing to certain circumstances, it was resumed on the Island of St. George only; on St. Paul's Island no seals were killed that year or the following year, and even the year after that only half the usual number of seals were taken on that island.* After these close years, i.e., on St. George's Island from 1808, and on St. Paul's Island from 1810, until 1822, the killing went on uncontrolled on both islands; so little thought was taken for the future that even the sekatah were killed for their fur, while the cows perished by hundreds in the battues and on the way from the rookeries to the place of slaughter.

It was only in 1822 that Muravieff (Chief Manager) gave orders for some of the young seals to be spared every year for the increase of the species. But the overseer of the Pribyloff Islands, instead of sparing 50,000 or 40,000 of them as Muravieff wished, spared only 8,000 or 10,000 in the course of four years. Chistinkoff, who succeeded Muravieff as Chief Manager of the Colonies, thinking that the number of fur-seals must have increased in consequence of the measure adopted by Muravieff, and being assured by the Overseer of the Pribyloff Islands that the number of seals on St. Paul's Island had at least doubled during these four years, gave orders for 40,000 to be killed each year. In 1828 the new Overseer of the Pribyloff Islands, although he did his best to kill as many seals as possible (i.e., to exterminate the species), only succeeded in taking 28,000.

As it was evident that under this system the number of fur-seals was rapidly diminishing, orders were given that great care should be taken in separating the full-grown and young females from the seals to be slaughtered, and that, even of the seals which it was permitted to kill, as many as possible should be spared. In spite of these precautions, however, the number of seals remained stationary, instead of increasing. At last, in 1834, the Board of Management of the Company, convinced by the powerful arguments of Baron Wrangell, decided to sacrifice immediate profits, and to issue a new order, in accordance with which only 4,000, instead of 12,000, fur-seals are now taken on St. Paul's Island.

No seals were taken on St. George's Island in 1826 and 1827, and since then great care is taken, and great economy practised, in the pursuit of the fur-seal industry.

It appears, then, that it was not till 1805, that is, not till after the union of the Companies, that any attention was paid to the preservation of the fur-seal species.

It also appears that all half measures are useless, or at least that they only to a certain extent help to preserve the species, and that only the measure last adopted is, under present circumstances, really effective. And if the system now adopted by the Company remains in force for fifteen years, i.e., till 1849, we can say with certainty that the fur-seals will be three times as numerous as they now are, and that, with good management, they will long continue to yield large profits. On the other

* Probably this is the chief reason why the number of seals is now so much greater on St. Paul's Island than on St. George's, on which latter island there were, before the close years, almost as many seals as on St. Paul's. There can be no doubt that the preservation of the fur-seal species is in great part due to Bessanoff's wise measure; but for his action the Company might long ago have been deprived altogether of these valuable animals, already so rare and soon to be much rarer still.

hand, if the Company prefer immediate profits, the fur-seals will very soon become extinct. This is proved by Table No. 2 annexed to this volume.

Nearly all the old navigators are of opinion that to establish close years, i.e., not to kill any fur-seals for several years, does not have the effect of increasing their numbers, but entails the permanent loss of the animals. In support of this argument they state that after the close years there are always fewer fur-seals than there ought to be, e.g., on the Island of St. George there were taken in the first year, after the two close years, only 4,778, instead of 10,000 or 8,000, the take in the year preceding the close years having been 5,500.

This argument, however much force there may appear to be in it, is quite fallacious, firstly, because it is impossible that any species of animal can become extinct if left to itself, and, secondly, because very many here have been of opinion, and have considered it to be an undoubted fact, that the fur-seal cows begin to bear young in their third year, i.e., after the expiration of two years from their birth. As none of the close periods known here lasted for more than three years, there was no time to see a real increase. As a matter of fact, if we carefully consider all the results of the close times, we shall see that the fur-seal cows do not begin to bear young until the fifth year from their birth. This is proved by the following considerations:—

(a.) On St. George's Island, after the first close period, the number of seals had diminished by one-fifth in 1828, and continued to diminish in the same proportion in each of the three following years; in the fifth year after the close period there was no diminution; in the sixth year there were one-twelfth more seals than in the preceding year; and in the seventh year one-seventh more seals than the year before.* This shows that the females born in 1828 did not begin to bear young until the fifth year; and if we consider the fact that the greatest increase took place after six years, it is evident that not every female bears young even in the fifth year after her birth.

(b.) It is well known that the male fur-seal cannot be a sekatch before he is 6, or at least 5 years old. How then can the females bear young before they are 4 years old?

(c.) If the male fur-seal cannot be a sekatch before he is at least 5 years old, then, if we accept Buffon's saying, that "an animal may live seven times the period necessary for it to attain maturity," the fur-seal sekatch may live not less than thirty years, and the female not less than twenty-eight years.† If we accept Buffon's dictum, and infer from it that "an animal attains maturity (and is therefore able to propagate its species) only after it has completed the seventh part of its life," it follows that a fur-seal cow cannot bear young till she is 4 years old.

There can therefore be no doubt that the fur-seal cows begin to bear young only in their fifth year, i.e., only after they are 4 years old, and not in their third or fourth year. It may, indeed, be admitted that some females bear young in their fourth year; but that is the exception, not the rule. In order to convince ourselves that the cows cannot bear young in their third year, we have only to look at the 2-year-old female and compare her with the sekatch and the cows; we shall then see that it is impossible.

Do the fur-seal cows bear young every year? How many times in their life do they bear young? These questions are very difficult to answer, because no observation is possible. It is thought, however, that, while the cows are still young, they bear every year, and, as they grow older, only every other year; consequently, they may, under ordinary circumstances, produce in the whole course of their life from ten to fifteen pups, or even more. This opinion is founded on the fact that an excessive number of cows without pups has never been observed in any year except 1832; and it cannot be maintained that the cows which are not about to become mothers do not come to the Pribyloff Islands at all, because such cows are seen there every year. But however great the number of cows without pups may be, the opinion of the old navigators, founded on observation, is that we cannot go wrong if we estimate that not more than one-fifth of all the cows are without pups. However, to avoid going wrong myself, or leading others into error, I have put the number at one-third, in my calculations of the increase of the fur-seals.

* See Table No. 1.

† This view is confirmed by the observations of the old navigators, and especially of *Shayashnikoff*, one of the best Crookes, who, on arriving at St. Paul's land in 1817, noticed a certain sekatch (remarkable for its bald head) which at that time already had a large herd of cows, all of which the active old sekatch possessed. From this it seems evident that this male had become a sekatch more than five years before, and that he was, at the time of *Shayashnikoff's* arrival, not less than 10 years old. This sekatch continued to come to St. Paul's Island every year for the next fifteen years, i.e., till 1832, and always established himself on the same spot; and it was only during the last few years that the number of his cows began to diminish.

There is one other question of great importance in connection with the estimating of the increase of the fur-seals, viz., "*Of the young fur-seals born in any one year, what proportion are males?*" and "*Is the proportion of males to females always the same?*"

If we consider the number of bachelor seals which accumulated during the close years 1822, 1823, and 1824, on St. Paul's Island, and 1826 and 1827 on St. George's Island, we find that the numbers of the bachelors vary considerably; for instance, on the Island of St. Paul, in three years, 11,000 fur-seals were spared, and in the three following years 7,000 bachelors were taken, i.e., almost two-thirds of the number of those spared; while, on the other hand, on St. George's Island, after 8,500 fur-seals had been spared in two years, less than 8,000 were taken, i.e., a little more than a third of the number spared.

How are we to account for this inequality? Is the number of bachelors or males born sometimes greater and sometimes less? Or are there years in which the number of females which do not bear young is very great? Probably both these questions must be answered in the affirmative.

I have, therefore, come to the conclusion—and my opinion agrees with that of the sealers—that half of the seals born in any given year are males and half females.

In proof of many of the above statements in regard to the fur-seals, I append Table No. 1, which shows the number of fur-seals taken on the Pribyloff Islands from 1817 to 1838 (see the end of the volume.)

This Table justifies the following conclusions:—

1. There is not a single normal year in which the number of fur-seals taken is equal to the number of those killed in the preceding year; but less are taken every year.

2. The decrease in the number taken is not uniform; sometimes one-sixteenth less are taken, sometimes one-tenth less, sometimes one-fifth, and sometimes even one-seventh less; but on an average *one-eighth* less.

3. Therefore, if the killing is continued in the ordinary manner, the whole fur-seal species may become extinct in fifteen years.

4. The decrease is generally less when in the preceding years the number of bachelors has been greater (i.e., when the young seals have not all been killed); the decrease is greater when the number of bachelors has been less.

5. The number of bachelors is the true criterion of the number of fur-seals, i.e., if the number of bachelors increases, the number of young cows increases also, and *vice versa*.

6. The bachelors do not separate from the herd or collect in distinct herds till the third year from their birth, as appears from the numbers spared on the Islands of St. Paul and St. George (1822, 1823, and 1824, and 1826, 1826, and 1827, and 1827).

7. The decrease in the number of fur-seals on the Island of St. George, after two close years (1826 and 1827), continued for two years longer, and always in the proportion of *one-fifth*.

8. In the fifth year after the first close period the decrease may be said to have ceased; in the sixth year there was already an increase of one-twelfth, and in the seventh year there was an increase of *one-seventh* as compared with the lowest figure; during the three following years the number of fur-seals was stationary.

9. If there had been no close period on St. George's Island in 1826 and 1827, then, if we estimate the decrease at only *one-eighth* (see paragraph 2), there would not have been a single fur-seal on St. George's Island in 1840 and 1842. This is shown by the following Table:—

Year.	Number of Seals.	Year.	Number of Seals.	Year.	Number of Seals.	Year.	Number of Seals.
1825	5,500	1829	2,468	1833	1,360	1837	700
1826	4,400	1830	2,160	1834	1,190	1838	580
1827	8,520	1831	1,800	1835	1,040	1839	600
1828	2,316	1832	1,554	1836	850	1840	400

During the last years the decrease must be estimated at more than one-fifth, because the smaller the herd the fewer will be the sekatch, who are the defenders of

the herd, and therefore the sooner will the "kasatki" (killer-whales) be able to exterminate them.*

10. Consequently, a period of two close years prolonged the existence of the fur-seal species for more than ten years, and the Company was fully compensated for the loss it suffered during the close period (about 8,500 seals); for if the Company had not established a close period in 1826 and 1827, it would certainly not have obtained more than 24,000 seals from 1826 to 1838, i.e., during twelve years, but having established a close period for only two years, it obtained 31,576 seals in ten years, and, moreover, would be able to obtain over 15,000 more without any close period.

11. If, then, on St. George's Island, by sparing such a small number of fur-seals (about 8,500) for such a short period, i.e., for two years, such a great advantage has been obtained, how much greater will be the benefit to be derived from the last measure introduced by the Chief Manager of the Company on the Island of St. Paul, where seals have been spared for four years, and more than 30,000 fur-seals are now left to propagate the species.

I append a Table showing the number of fur-seals which will be produced in fifteen years from 7,060 seals spared on St. Paul's Island in 1835 (see Table No. 2 at the end of this volume). This Table is interesting, even if no conclusions are drawn from it.

In 1835, by order of the Chief Manager, a close period was established, or rather a certain number of fur-seals were spared on the Island of St. Paul, after 12,700 fur-seals had been taken in 1834, the preceding year. If the close period had not been established, about 12,200 seals would, under ordinary circumstances, have been taken on the whole island in 1835, estimating the decrease at only one-twenty-fifth; but instead of 12,200, only 4,052 were killed; consequently, in 1835, 8,148 young seals, male and female together, were left to propagate the species.

In drawing up the Table of the increase of the fur-seals, however, I have allowed for an *average* decrease, i.e., a decrease of one-eighth; according to this calculation, the number of young seals spared is at least 7,060.

Of these 7,060 young seals, I reckon 3,600 as females, i.e., I allow for rather more females than males.

Of the new cows born after the establishment of the close period, I estimate that one-half have pups in the first year in which it is possible for them to bear young, and that two-thirds have pups in the subsequent years.

The females, after twelve years from the time they first bear young, i.e., when they are 18 years old, must decrease in numbers from natural causes, and when they are 22 years old they cease bearing.

Of the young seals born in the fifth year after the establishment of the close period, and in subsequent years, I estimate that one-half are females, and the number thus obtained is inserted in the Table, while the males or bachelors are included in the totals.

It appears from Table No. 2 that—

1. In 1850 none of the old cows (i.e., cows which were capable of bearing young in 1835) will be living (estimating their decrease at one-eighth each year).

2. During the first four years after the 7,060 young seals have been spared, i.e., until the new cows begin to bear young, the number of young fur-seals will generally diminish.

3. After six years the number of young seals will be *equal* to the number spared, i.e., about 7,000. The number will not be *doubled* till after twelve years have elapsed, and it will be *trebled* after fourteen years; fifteen years after the establishment of the close period we shall have in the first year 24,000, in the second 28,000, in the third 32,000, in the fourth 36,000, in the fifth 41,000; that is 160,000 in the 5 years. After that, if economy is practised, i.e., if one-fifth of the seals are spared, it will be possible to obtain 32,000 annually for ever, or at least for a very long time.

4. In addition, it will be possible to obtain in the course of the fifteen years following the establishment of the close period from 60,000 to 70,000 bachelors, which, together with the 160,000 young seals, make up 280,000.

* The Overseer of the Island of St. George himself saw some "kasatki" † (killer-whales) tear several seals to pieces in a very short time near the shore of the island.

† [In another part of the book Veniaminoff says that the "kasatka" (killer-whale) is one of the twelve kinds of whales known in Alenian waters, and is called by the natives "agilook."—TRANSLATOR.]

5. If no young seals were spared the whole fur-seal species would become extinct in fifteen years, and during that period, whatever efforts were made, not more than 50,000 seals altogether could possibly be obtained.

I have to observe that the estimates in the Table with regard to the increase of the fur-seals are most moderate, and that in estimating the decrease of cows the average decrease has been taken. Moreover, only 4,860 young seals were killed on St. Paul's Island in 1886 and 1887, instead of 7,900; accordingly, in two years 1,500 cows were spared on that island, which are not taken into account in the Table, and from which a large number of seals may be obtained.

In order to show that the principles on which my estimate of the increase of fur-seals on St. Paul's Island is based are sound, I annex a similar Table with regard to the numbers obtained from the fur-seals spared on St. George's Island in 1826 and 1827. This Table is drawn up on the same principle as Table No. 2, and clearly shows the correctness of my estimates. (See Table No. 3.)

extinct
e than
case of
the
led on
1,500
e, and
of fur-
ward to
96 and
shows

(Table No. 1.)—Showing the Number of Fur-Seals Killed on the Pribiloff Islands from 1817 to 1888.

ON ST. PAUL'S ISLAND.

	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	Total.
Fur-seals ..	47,860	45,922	46,300	39,700	35,750	27,900	23,300	18,850	21,450	29,550	17,750	16,900	16,300	14,800	12,500	12,650	12,850	12,400	3,900	2,500	2,000	..
Whiskers ..	..	..	..	..	..	250	800	1,000	3,150	2,700	1,850	1,550	950	550	450	800	250	200	100	1,200	2,200	..
Total ..	47,860	45,922	46,300	39,700	35,750	28,150	24,100	19,850	24,600	32,250	19,700	18,450	17,250	15,350	12,950	13,450	13,100	12,700	4,000	4,600	4,200	664,300
	Spent for hunting ..										2,700	6,000	2,500	Banks opened for hunting ..								8,000 7,750 7,000

ON ST. GEORGE'S ISLAND.

	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	Total.
Fur-seals ..	12,320	15,004	11,814	10,300	9,545	8,319	5,725	5,350	5,000	5,400	Spent for hunting {		2,875	2,500	2,001	2,111	2,111	2,000	2,475	2,500	2,500	..
Whiskers ..	..	..	..	..	..	..	..	..	..	..	for hunting {		1,000	1,079	100	115	61	51	53	100	125	..
Total ..	12,320	15,004	11,814	10,300	9,545	8,319	5,725	5,350	5,000	5,400	..	..	4,775	3,579	2,101	2,226	2,172	2,051	2,528	2,600	2,625	114,005
Total for both islands ..	60,180	59,926	58,225	50,220	44,995	34,469	29,823	25,400	26,100	32,250	19,700	24,225	20,811	18,204	15,054	15,416	16,412	14,751	6,500	6,300	6,225	571,304

(Table No. 2.)—ESTIMATED INCREASE OF FUR-SCALE IN TWENTY-TWO YEARS.

Year	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.
1835	1835.	1835.	1837.	1839.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	1846.	1847.	1848.	1849.	1850.	1851.	1852.	1853.	1854.	1855.	1856.
1	1835	5,600	From them obtained	from them	from them	960	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	
2	1836	Ob.	3,150	Ob.	from them	785	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	1,350	
3	1837		2,755	Ob.	from them	600	918	918	918	918	918	918	918	918	918	918	918	918	918	918	918	
4	1838			Ob.	from them	2,410	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
5	1839			Ob.	from them	410	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
6	1840			From	from them	1,645	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
7	1841			Total	from them	1,560	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
8	1842			Total	from them	1,535	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
9	1843			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
10	1844			Total	from them	3,765	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
11	1845			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
12	1846			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
13	1847			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
14	1848			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
15	1849			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
16	1850			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
17	1851			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
18	1852			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
19	1853			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
20	1854			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
21	1855			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	
22	1856			Total	from them	1,120	Ob.	from them	600	905	905	905	905	905	905	905	905	905	905	905	905	

From this Table it appears that—(a) From 5,600 fawns it will be possible to obtain in the 16th year 84,700 fawn-ants; in the 16th year still more [?]; and in the 22nd year there will be a decrease, that is, taken in the 16th and following years more young could be spared for breeding; if a certain number are spared every year, there will not be less than 20,000 fawns annually in the succeeding years.

Total	1,660	6,200	5,500	4,320	5,400	7,000	9,500	9,700	10,700	12,500	12,600	16,000	19,000	21,500	24,700	29,200	32,250	34,400	41,400	48,300	56,700
-------	-------	-------	-------	-------	-------	-------	-------	-------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

From this Table it appears that—(A) From 1869 females it will be possible to obtain in the 16th year 24,700 fur-seals; in the 16th year still more (40,700) and in the 20th year 56,700. (B) In the 21st year there will be a decrease, that is, unless in the 16th and following years some young seals are spared for breeding; if a certain number are spared every year, there will not be less than 20,000 seals annually in the succeeding years.

(Table No. 3.)—Showing the Gain of Fur-Seals on the Island of St. George, drawn up on the same principles as the preceding Table.*

Years.		1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
1	1826	1826.	1827.	1828.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.
2		2,900	Females	obtained	from	them	450	700	700	700	700	700	700
3		Gain	2,056	Ob-	tained	from	them	300	600	600	600	600	600
		from old	females	1,700	1,500	1,300	1,000	700	550	400	250	100	50
Total	Females	2,900	2,056	1,700	1,500	1,300	1,450	1,700	1,850	1,700	1,550	1,400	1,250
	Boys	2,900	2,056	1,600	1,500	1,300	1,450	1,700	1,800	1,700	1,500	1,500	1,400
	Total	4,400	4,100	3,300	3,000	2,400	2,900	3,400	3,650	3,400	2,950	2,900	2,700

THE actual Take of Fur-Seals was as follows:—

Year.	1828.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	Total
Number of fur-seals	4,778	3,661	2,834	3,064	3,296	3,212	3,051	2,928	2,550	2,583	31,476

From this Table it appears that, up to the year 1833, the take ought to have been, according to the estimate .. 30,970
The actual take was .. 31,476

Difference .. 606

The reason for the difference is that the estimate of the increase was too low.

* And confirming that Table is a remarkable manner.

cy

"I

"I

of
the
inc
ha

wi
pr
we
is
me
Th
ye
th
th
we
Th
be
na
to
de
th
po
ev
A
m
of
fo

cu
al
St
m
of

10

m
if
on
th
st
In
w
m

Extracts from Russian Works translated by Mr. Fairholme.

"Materials for the History of the Russian Settlements on the Shores of the Eastern Ocean." St. Petersburg, 1861. Part IV.

"IX. Extracts from Captain Litke's Notes of his Cruise on the Sloop 'Seniavin,' 1826-29."
("Voyage round the World on the Sloop 'Seniavin,' of the Imperial Navy, in 1826-29." By Captain Litke, of the Imperial Navy. St. Petersburg, 1835. Three parts.) Page 144.

THE long-established trade with the captains of English and American ships was continued in spite of the absolute prohibition of trading by foreigners in our Colonies, contained in the new Charter of the Company, for it was often only in this way that the Colonies found it possible to obtain articles indispensable to them, and even provisions; latterly the Managers have not been able to see any great harm in allowing foreign ships to visit them.

If foreigners had been forbidden from the time of the establishment of New Archangel to trade within the limits of the Russian dominions, and the Company had had the means of enforcing the prohibition, that measure might have been very useful to the Company. The otter-skins, of which there were then large quantities everywhere, would for the most part have come into its hands; but what is more important, the American *savages* would not have been supplied with fire-arms, which alone made them dangerous neighbours to us, by *civilised* people, and would soon have ceased to be savages. The first ship of war sent to cruise in our Colonies left Cronstadt in 1821; such ships were sent every year for four consecutive years; but of all the ships sent only one, the "Apollo," did actually cruise in the straits, and that ship did not succeed in capturing a single illicit trading vessel, although there were then a score or so of them in those parts;* for in such a labyrinth of straits the only way to insure success would be to make use of a whole fleet of small swift vessels. But such a blockade would now be useless. The foreigners had carried on this disgraceful traffic to the detriment of our Company, for twenty years before steps were taken to put an end to it; the others found their way into their hands; and all the native tribes in the neighbourhood were supplied with fire-arms to such an extent that they forgot how to use their own arms, and could not have killed a single wild animal without guns; justice therefore demanded that they should be supplied with these arms, which had become a necessity to them. If the Company had undertaken this, it would have deprived the foreigners of the only means they possess of attracting the natives, and would undoubtedly very soon have put an end to the traffic, for even as it is, the foreigners have ceased to find much advantage in it. While we were at Sitka, two American vessels (three-masters) came there, which had been cruising about the straits for several months with very little success. They had come to Sitka to try to get rid of their cargoes, which they offered for a mere nothing, being ready to allow payment to be deferred, and offering to come for it the following year. . . .

It is evident from what has been said above that there would be no advantage in continuing to enforce strictly in our Colonies the system of prohibition; the foreigners have already done our trade all the harm it was possible for them to do, and the permission given to the citizens of the United States by the Convention of the 17th April, 1824, to trade, fish, and hunt in our waters, has not done much harm to the Company, because at the present time this trade is for the most part in the hands of the Company itself.

Golovinn, in the course of his description of a visit to the American Colonies in the spring of 1810 ("Materialy," Part II, p. 76), says:—

"When we went to America we were afraid that we should find the Company's Settlements in the most deplorable condition from the want of food; and they would no doubt have been in a bad state if it had not been for the citizens of the United States, who, coming to these shores to trade, brought on their ships large quantities of provisions, such as flour, biscuits, rice, salt beef, and pork, &c., which they gave to Baranoff in exchange for furs, to the great profit of the Company. We found all the store-houses at Sitka filled with provisions; some of the American ships called at the Sandwich Islands on their way, and brought from thence large quantities of salt and of a root called 'tara,' which, when dried and crushed, becomes like flour, and is quite as nourishing as flour, especially when mixed with it; bread or biscuits made of this mixture are very good. Besides three American ships

* Id. rally, "several tons."





which we found at Sitka, and one of which left soon after our arrival, two others arrived during our stay, the 'Mercury,' Captain Eyres, and the 'O'Cain,' Captain Vindinip. The cargoes of both these ships consisted chiefly of provisions. It thus happened that the rye meal, brought by us from Kamtchatka for the Company, which at another time might have saved the inhabitants from dying of starvation, was superfluous, and the zeal of Commissioner Khliebnikoff, who, in the interest of the Company, had bought with much trouble provisions for the American Colonies, brought upon him the displeasure of the Chief Manager, because the meal was very dear. This food, which by a mere chance became useless, might have saved the lives of many of the Company's servants. The latter have not to thank their masters for this kind of accidental or temporary abundance, but they have to thank the commercial spirit and enterprise of the Americans, that is, of those very traders whom the protectors of the Company wished to exclude altogether from the north-western coast of America. It was with this object in view that our Consul-General made a representation to the American Government; he was, however, informed, in reply, that that Government had not the power to prevent its citizens from trading freely in any part of the world, but that, if they carried on a forbidden traffic, contrary to the laws of any nation, that nation must itself exercise a control over them."

"Materials for the History of the Russian Settlements on the Shores of the Eastern Ocean."
St. Petersburg, 1861. Part III. K. Khliebnikoff's Notes on America, p. 4.

"Baranoff decided to establish his chief office here.* He had already informed the Board of Directors that, if this place were chosen, the profits of the Company would amount to millions of roubles. He argued that for more than ten years from six to ten English and American ships had visited the port each year, and that from 2,000 to 3,000 skins had been obtained by each of them annually from various places. Allowing for an average of 2,000 skins, the six ships exported 12,000 every year. Even if this figure were reduced to 10,000, the number of skins exported during the ten years would be 100,000. If these had been sold at Kamtchatka at 30 piastres or 45 roubles each, they would have produced 4,500,000 roubles. If 1,500,000 roubles' worth of merchandize had been given in exchange for these skins, the net profit obtained during the ten years would have been 3,000,000 roubles."

"Mention has been made above of the trade carried on with American and English captains at Kadiak. After the occupation of Sitka in 1805, many foreign ships visited that place. In the absence of merchandize and provisions, Resanoff bought from Mr. Wolff the ship 'Juno' with her entire cargo.

"Trade was carried on with the Americans at Sitka to the extent of 1,170,000 roubles, including the amount expended on the purchase of the 'Juno,' 'Myrtle' ('Kadiak'), 'Lady' ('Ilmen'), 'Ataelpia' ('Behring'), and 'Amethyst.' The Americans received in payment 4,894 sea-otter skins of different kinds, 3,845 otters' tails, 9,694 beaver ('bobr rietahni') skins, 362,730 fur-seal skins, 864 beaver ('vuidra') skins, and 235 fox skins. 94,587½ piastres were remitted to the Board of Directors. Baranoff always reckoned the piastre as equal to 2 roubles, but when the rate of exchange fell in Russia the Company suffered considerable loss."

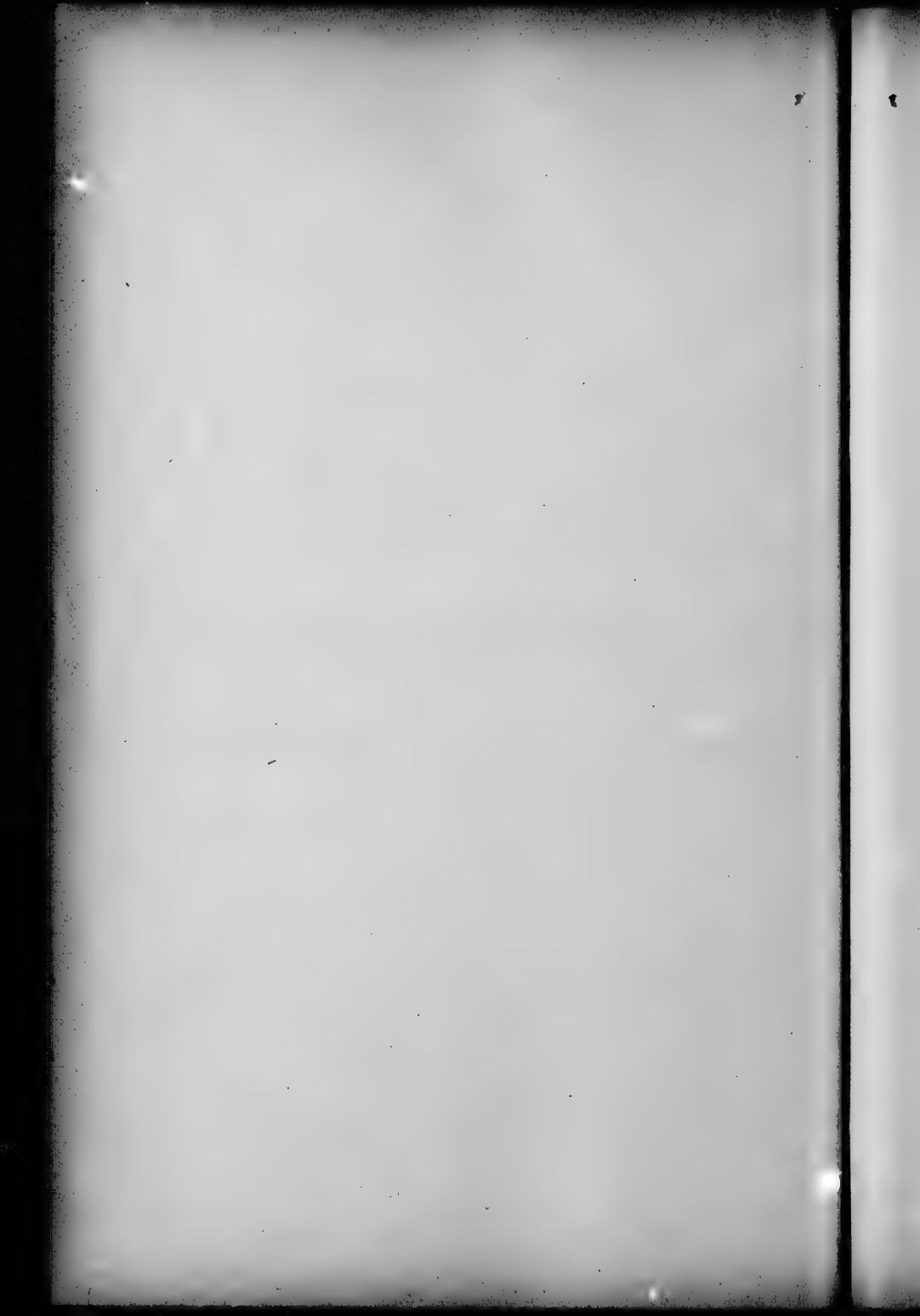
during our
both these
y us from
m dying of
rest of the
on him the
by a mere
The latter
ey have to
whom the
merica. It
an Govern-
prevent its
den traffic,

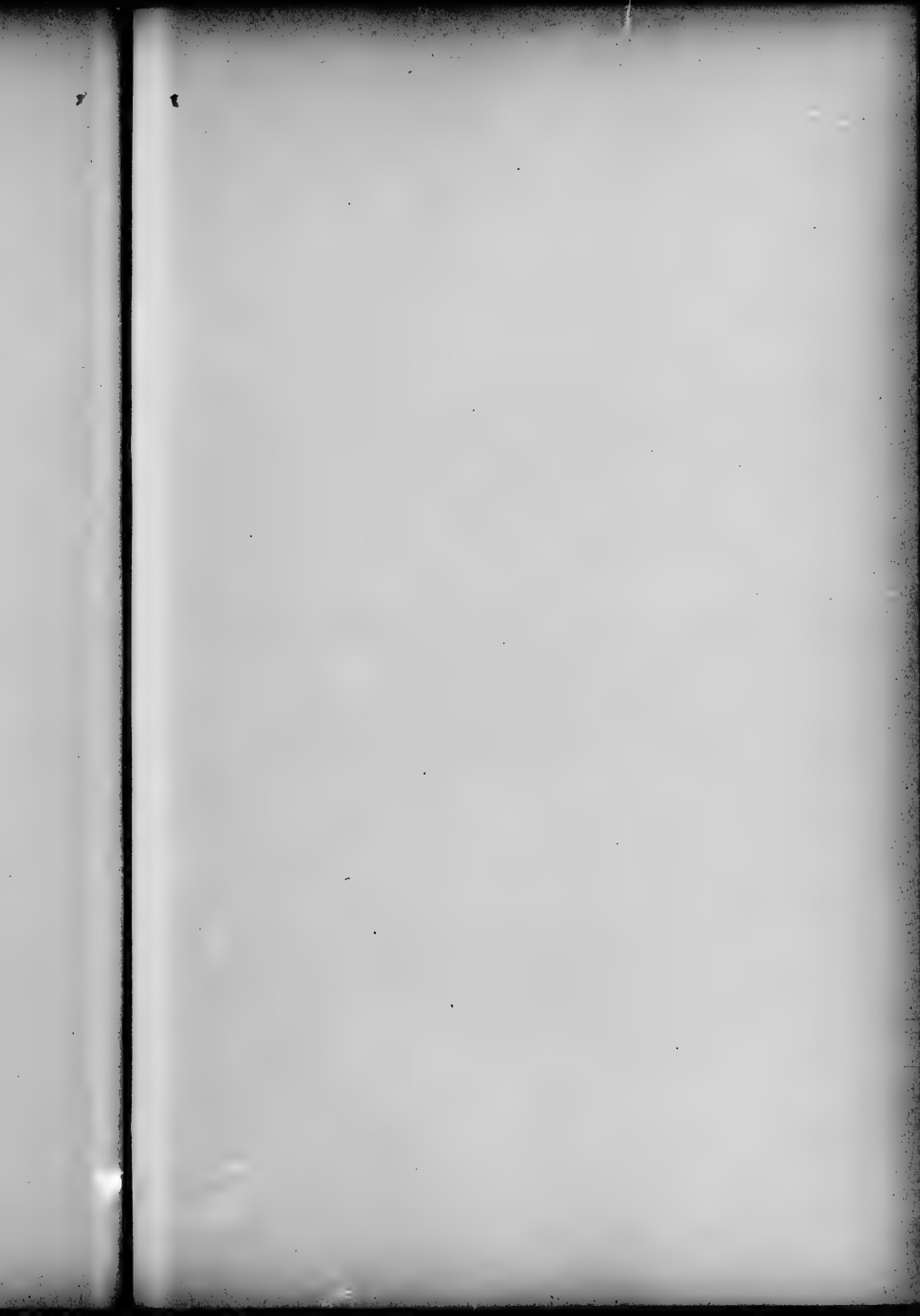
n Ocean."

Board of
millions of
ships had
h of them
ted 12,000
ng the ten
ubles each,
had been
have been

captains at
a. In the
with her

, including
'Atacapia'
f different
64 beaver
Directors.
age fell in





PRINTED

*J. Veniaminoff: "Notes on the Islands of the District of Unalaska."
St. Petersburg, 1840. Part II, pp. 349-382.*

THE fur-seals are a species of amphibious animals, very like the ordinary seals. The ordinary fur-seals (not the big males) are a little bigger than the large kind of seals. Their hair is silvery grey in colour, soft, and has an undergrowth of down.

The fur-seals are only found on the Pribyloff Islands, and especially on the Island of St. Paul.

The fur-seals may be considered domestic animals,* because, however much they may be disturbed by the sealers, they invariably return in spring to their breeding-places. And it may be stated as an absolute fact that, except from special and extraordinary causes, the fur-seals never give up the places they frequent, and, like the sea-otters, never go to other places. This is proved by their having returned to their old haunts every year for more than fifty years.

The fur-seals may, therefore, be considered one of the surest and most important sources of revenue in this part of the world, provided that proper regulations are enforced in the exercise of the industry.

The fur-seals are becoming more and more valuable, for they are already considered one of the rarities of the world. Fur-seals used to be found in California and in South Shetland, but there are now none in the former country, and there will soon be none in the latter, so that there will be none anywhere except in our part of the world. Common sense therefore demands that we should do all in our power to prevent the extinction of the fur-seal species, while deriving all the profit we can from the industry.†

The seal-hunters divide the fur-seals into five classes. The first are the *sekatch*, the second the *half-sekatch*, the third the *bachelors*, the fourth the *cows*, and the fifth the ordinary so-called *kotiki*, or *grey fur-seals*.

The *sekatch* is the full-grown male, not less than 5 years old, who already possesses several females. He is more than three times the size of the female. His hair is dark grey, and longer from his head to half-way down his body than on the other parts of the latter.

The *sekatch*, being the strongest of all the fur-seals, is the guardian and protector of the herd against enemies, on whose approach he gives a signal to the rest by a peculiar cry, and tries to keep the seals together and in order.

The *half-sekatch* is a male 4 or 5 years old; his hair is a little lighter than that of the *sekatch*, and his mane is also long. He, too, is a full-grown male, but young and without females, because, not being so strong as the *sekatch*, he cannot resist him and have females.

The *bachelors* ("kholostiaki") are the 2- and 3-year old males. The last year's males are also counted as bachelors, and are known as *young bachelors* ("kholostiatschki"). The bachelors have no mane, and their hair is light grey, especially in spring.

The *cows* ("matki") are the females capable of bearing young. Their hair is almost

* All kinds of domestic animals require to be looked after and cared for before they can be made use of; in the case of fur-seals, however, it is necessary not even to come in sight of them until the time arrives for taking them.

† I have had much better opportunities for collecting information about the fur-seals than about other animals, and I therefore devote more space to them than to the others.

identical in colour with that of the sekatch, but is sometimes of a greyer, sometimes of a redder shade. The cows are two and a-half times the size of the ordinary kotiki.

The *kotiki*, or grey fur-seals, are the 4-month-old males and females born in spring; it is almost exclusively from this class that the skins for commerce are taken. Their fur is better than that of any of the other classes. The fur of young sea-lions is often very like that of the *kotiki* in colour, but the sea-lions have no down at all, and their hair is coarser and shorter.

The fur-seals do not always remain on the Pribyloff Islands; they arrive for the summer from the south, generally during the prevalence of south or south-west winds; as already stated, they generally pass through the Unalaska Straits, both in coming and going. No one knows as yet where they come from, or where they go to for the winter. Perhaps this will long remain a mystery. The sekatch always arrive first, braving all obstacles; they land even if the rookeries are covered with ice and snow, &c. Some time between the 18th and 23rd April the first sekatch may be seen on the shore, each on the spot which he occupied the year before.*

After them come the half-sekatch and bachelors; these do not always go to the places they occupied the year before. The bachelors, having rested after their journey, go into the sea in search of food, and lie down in other places. They constantly change from one place to another in the course of the summer; but when they come on shore they always lie apart from the sekatch, and further from the shore than these; the reason for this is that the sekatch, from jealousy, will not allow them to come near the herd.

From the 26th May (or, very rarely, from the 21st May) the cows begin to arrive. They do not come on shore at once, or without carefully choosing a place for landing. The cows continue to arrive, or rather to appear off the shore, until the 20th June. Probably they all approach the islands together, but only those of them land which are about to have young. It is known for certain that the cows will not come on land, even to their own breeding-places, if for any reason there are no sekatch there. As soon as the cows approach the shore the sekatch call them to them with a peculiar roar. The cows give the preference to places where they have been before, and to the most active sekatch. When the cow comes out of the sea the sekatch greets her with caresses.

It has been ascertained, by noting particular marks on the bodies of certain fur-seals, that the animals always return to the same rookery. As additional evidence of this fact it may be stated (1) that the hair of the fur-seals frequenting the Island of St. Paul differs (of course only to an experienced eye) from that of the fur-seals of the Island of St. George, and that the fur-seals always return to the place where they were born; (2) that, even at the time when they were most numerous, the fur-seals never took possession of the small islands close to their rookeries, although these islands would, to all appearance, have been more convenient for them than their rookeries.

Every sekatch tries to get possession of as many cows as possible, and, to attain this end, adopts various expedients; the sekatch call out to the cows, try to frighten them, drag them about holding their manes in their teeth, take away cows from each other, and sometimes even have recourse to stratagem, *stealing* the cubs, and thus forcing their mothers to follow them.

The number of cows belonging to a single sekatch now varies from 10 to 150 according to the activity of the sekatch and the attraction he possesses for the cows. In former times one sekatch would sometimes have a herd of from 500 to 700 cows. Some sekatch have no cows at all, and these do not remain lying on the shore for such long periods as the others.

When the sekatch arrive at the islands they are extremely fat, and, until the arrival of the cows, they are nearly always asleep, and their voices are never heard. From the time of the arrival of the cows until they have impregnated them all, the sekatch never leave the shore except it may be to meet a newly-arrived cow, and apparently they never sleep, for if they did their cows would disperse. The guard they keep over the cows is so strict that they will not allow them to move a yard from them until the time comes for them to have young; as soon as a cow has had a pup she is allowed to go into the sea to get food, and while she is away the sekatch keeps careful watch over her pup, to see that it does not join other herds.

During the whole period that the sekatch are on shore with the cows they eat nothing whatever, nor do they drink. Sometimes on hot days they will drink seawater, but not to quench thirst, because, as has often been observed, they bring it

* This has been verified by observing particular sekatch, which had some special mark on their bodies.

up again in white foam within an hour or less. It is no wonder that, after such a period of watching and fasting, the sekatch are extremely weak and thin.

The fur-seals never stop screaming day and night. Their cry, especially that of the pups, is very like the bleating of a sheep. It has been noticed that they scream louder in bad weather.

The fur-seal rookeries are always on stony shores sloping gently to the sea.

The cows begin to have pups about the 30th May, and go on all through June. Some have been known to have young so late as the 10th July. The cows generally have only one pup at a time. When a cow has two, she generally dies. No assistance is given to a cow when giving birth to a pup, nor is she interfered with in any way. It is believed that foxes sometimes carry off new-born pups, because seal-skins are often found in their dens; however, these may be the skins of pups which were born dead, or which have died soon after birth. Cows sometimes give birth to dead pups, and sometimes pups are crushed by the sekatch in their pursuit of the cows.

Some cows have no pups, but nothing certain is known on this point. There are few such cows in ordinary years. Of late years, one season, that of 1832, has been remarkable for the number of cows which were without pups; this circumstance is believed to have been due to the fact that the ice of the year before remained unusually long round the shores of St. Paul's Island, and prevented the cows from landing; consequently, many cows had pups on the ice, and, not arriving on shore in time, were not impregnated.

There are three very important points in connection with the cows which still require to be cleared up, viz. :—

1. At what age do the cows first have young?
2. Do they have young every year?
3. How often in the course of their lives do they have young?

All that can be said on these points will be said below.

The sekatch does not impregnate the cow immediately after she has had young; he lets her alone and allows her complete liberty to go into the sea for several days, in all probability until she is completely purged.

Before coition the fur-seals, like other animals, indulge in caresses, which continue for some time. The actual copulation generally lasts about twelve minutes. When a cow has been impregnated the sekatch ceases to watch her or her pups.

Although the sekatch is very much larger than the cow, no instance is known of a cow having been crushed by a sekatch during copulation. But it happens pretty frequently that bachelor sea-lions have connection with fur-seal cows (always against the will of the cows), and in that case the latter are often crushed by the weight of the sea-lions; if the cow survives, she gives birth to a mongrel, having the head, paws, and hair of a sea-lion, and the down of a fur-seal.

A fur-seal sekatch will sometimes have connection with as many as twenty-five cows in the space of twenty-four hours.

A sekatch does not have connection twice with the same cow; but the half-sekatch and young sekatch violate some of the impregnated cows, and it is probable that it is these cows that give birth to twins.

The male fur-seals are extremely jealous and fierce at this period, which is the time when fights most frequently take place between them.

The pups take no nourishment except their mothers' milk from the day of their birth until they leave the islands; they never take the milk in the water, but always on shore. A month after their birth, and no earlier, they begin to go to the water's edge and to paddle amongst the stones. Having thus gradually got accustomed to the water, they have become good swimmers by the month of August, and are able to go out a long distance from the rookeries; they then begin to leave their mothers, sometimes for a whole day, and swim about in the sea or lie in some warm sheltered place, only returning home for milk; the mothers go in search of them if they do not return home by the evening.

In some years, in the month of September, the young fur-seals form *otbors* (as they are called in the Pribyloff Islands), i.e., they collect in large numbers at certain places and lie about keeping no watch; so that it is easy to capture the whole herd. These *otbors* are very advantageous to the sealers, but interfere seriously with the propagation of the species.

The idea of some people that the fur-seal cows teach their pups how to swim, and in so doing hold them in their teeth, &c., is quite erroneous. It is only the sea-otters that do this. But it is a well-known fact that, before the fur-seals leave the islands, the cows teach their pups how to escape from an enemy. To practise this, they raise

false alarms. For instance, while the mothers are lying on the shore with their pups, no enemy being in sight, they will suddenly cry out and make for the sea. Those of the pups who understand follow their mothers, while those who do not understand only cry out and remain on shore. The mothers come back to these latter and repeat the manoeuvre.

The fur-seal pups are black at their birth; this makes them look, from a distance, very like little puppies. About the middle of August they begin to turn grey (the ordinary colour). This change in the colour of the young fur-seals does not arise from their hair turning from black to grey, but, as in the case of nearly all animals, the original hair gradually falls out, beginning from the forepaws, and makes way for the new silvery hair. At this period (while they are casting their hair) they keep scratching themselves. The length of the time required for the change to be accomplished varies; some years it takes place earlier, some years later. It sometimes happens that large numbers of fur-seals leave the islands without having changed their hair.

The young fur-seals, until they begin to learn to swim, lie in groups near their mothers. The sekatah have never been known to bite them.

The young seals of the previous year, i.e., the males and females which have not been killed during the previous season, are no larger than the young 4-month-old seals; they can only be distinguished by their greater activity and sagacity, and by their figure, which is more slender and graceful. Till the month of September they always lie in the herd with their mothers, and often leave the shore to look for food.

At this age the young fur-seals are wonderfully playful; they never stop playing all the time they are on shore. They turn somersaults, bite each other, drag each other into the water, splash about, &c.; sometimes a young seal will scramble with great difficulty on to an outlying stone merely for the purpose of dragging from it a sleeping companion, and falling into the water with him.

The killing of the seals begins about the 28th September; a time is chosen, if possible, when wind and weather are favourable. The best weather for the purpose is when, after two or three wet days, fine clear weather sets in, or, at least, the rain stops. At such times the fur-seals lie quietly on the shore and rest, because during the wet weather they are constantly going into the sea, and cannot long remain lying on the shore. The wind most favourable to the operations is that which does not carry the scent of the sealers to the fur-seals.

Having chosen a time when wind and weather are favourable (any hour of the day will do), all the inhabitants, of both sexes and all ages, having armed themselves with *dregalki*, i.e., short sticks thick enough to kill a seal with, form a chain, and proceeding along the shore where the seals are lying, drive them all inland. After driving them a short distance, they stop them, and begin to sort out the cows and sekatah (these latter are very rarely found amongst the seals driven in) from the young seals; the old cows, which have already had experience of a *battue*, make off of their own accord the moment they see a chance of getting to the sea; the young cows have to be driven to the sea by force. Sometimes it is found to be impossible to drive a cow away from the place where her pups are; in such a case she has to be driven with the rest to the place of slaughter. When the slaughter of the seals begins some of these cows try to protect their pups, and lie over them for a long time, so that force has to be used to drive them to the sea. It is said that tears are sometimes seen in the eyes of these cows.

After the cows and sekatah have been separated from the rest of the herd, the latter is divided up into small groups, which are slowly driven to the place of slaughter, which is sometimes as much as 10 versts distant. It is very difficult for the fur-seals to go so far. They cannot cover this distance in one day, because they are so built that they can only jump. For this reason they are often stopped and made to rest. The moment they stop they fall asleep from fatigue. The young fur-seals get along more easily in cold damp weather than in dry clear weather.

When the fur-seals have been driven to the place of slaughter, they are allowed to rest for an hour or more, because if they are killed while heated their flesh has a peculiar taste and is no good for salting; after the rest the sealers begin to kill them with the *dregalki*. The little pups, born during the year, are all killed without distinction, females as well as males; but of the animals born the year before only the males are killed, according to the Regulations now in force, while the females are, if possible, driven back to the sea.

Even children are able to drive the fur-seals to the place of slaughter, and to kill

them, such is their meekness, helplessness, and submissiveness. The sealers say that not every man finds it easy to raise his hand to kill these innocent creatures, whose only crime is to possess a fur.

Circumstances sometimes make it impossible to skin the dead fur-seals for four days or more. It is found that the skins begin to rot sooner if taken off the seals and left in a raw state than if left on them.

The skins are taken off and cleaned by men. One man can deal with 50 to 200 skins a-day. They are then handed to women, who stretch them on wooden frames, two on each frame, the fur on the inside. They are then dried in a drying-room heated with stones. The *banshtshik*, or overseer of the drying-room, must be a person of great experience and skill, otherwise the skins may be burnt or singed. When prepared the skins are tied up in bundles of fifty, and in due course dispatched to their destination. A portion of the flesh is prepared to serve as food for the inhabitants of the other Settlements, but the greater part is hung up on *labasa*, or scoreens, for use in winter. The entrails and the rest of the flesh are heaped up to be used for fuel.*

After the *battues*, which are sometimes organized as many as three times in the same place, the cows wander about the shore for some days calling for their young with pitiful cries.

After the first *battue* the fur-seals lie very near the water, and are very watchful. Some of the sleeping cows which have been awakened by the sealers driving the herd from the shore have been known to tremble all over, probably with fear, and then die.

The sekatch finish what they have to do about the middle of July, and then leave the herd and lie in solitary places, where they either sleep or go into the sea in search of food.

The fur-seals begin to leave the islands not earlier than the 3rd October, and choose favourable winds for starting. North-westerly and northerly winds are the most favourable for the seals' departure, as these winds are with them. Before starting the big fur-seals are more on shore than in the sea, while the little ones are more in the sea than on shore. After the first *battue* the big seals, i.e., the females and bachelors, often collect in large numbers on rocky headlands as if to take counsel. The little seals which have escaped from the *battue* generally return to the places where they were born.

By the beginning of November hardly a single fur-seal is to be seen in the neighbourhood of the islands, with the exception of a few sekatch. These latter sometimes stay till the end of November, and even till December. It has been noticed that although they sometimes come on shore, it is only for a very short time. No fur-seals have ever been seen in January or February. One sekatch was, however, once seen in February, and one in March 1832 on St. Paul's Island. They came on shore for a short time and then disappeared. Since then, so far as is known, no seals have ever been seen during those months.

We must now consider the question: *Where do the fur-seals go for the winter?* Before the Seal Islands were discovered, hunters living on Unalaska noticed that the fur-seals, returning in autumn from the north, spent some time in the northern bays of Unalaska, Akuman, and Akun, where the Aleuts hunted them; but as soon as winter approached the fur-seals went south through the straits between Unalaska and Unimak, and especially through the Unimak Straits.

After the discovery of the Pribyloff Islands, and when fur-seals had begun to be taken there, these animals were seen less and less frequently in the bays of Unalaska, and at last, about 1815, not a single fur-seal was to be seen in the whole district of Unalaska, and at the same time it became impossible to observe the periods at which they went north and south, and the straits through which they went.

We must not conclude that the fur-seals have ceased to migrate because they are no longer seen, and because sekatch have been observed in November and December; such sekatch were seen now and then at the time when the migrations could still be observed, and when the fur-seals still visited Unalaska. Where, then, do the fur-seals go for the winter, and where do they remain from November to April? There are none of them round the islands of the district of Unalaska, or anywhere on our American coast. Do they go to California? But, according to M. Khlebalkoff and M. Shelikoff (Head of the Ross, and afterwards of the Sitka establishment), the Californian fur-seals are quite different from the fur-seals taken on the Pribyloff

* The entrails, flesh, and bones kept in a heap rot during the winter, and turn into something not unlike peat.

Islands, and, moreover, there have been no fur-seals in California for the last five years. To New Shetland? But, in order to go there, they would have to swim more than 7,500 miles each way, and the journey would have to be performed in five months or less, i.e., they would have to cover not less than 300 versts in every twenty-four hours without resting. This is evidently impossible. If we are to suppose that the fur-seals leave the Pribyloff Islands only on account of the approach of winter, and pass the winter in the sea, why do they chiefly pass through (or why used they to pass through) the Straits of Unimak, when their shortest way south through the Aleutian chain would be by the Tshetyriokhsopotahny and other straits?

We will now consider the measures to be taken to increase the number of fur-seals, or at least to prevent the extinction of the species.

From the time of the discovery of the Pribyloff Islands till 1805, i.e., till General Resanoff came to America, no account was kept of the number of fur-seals killed, and no control whatever was exercised in the matter, owing to the fact that there were a number of Companies engaged in the industry, and therefore many masters, each of whom tried to take as many seals as possible. But Resanoff, seeing that this state of things must inevitably lead to the extinction of the species, gave orders for the killing of seals to cease; consequently no fur-seals were killed in 1806 and 1807 on the Pribyloff Islands, and all the persons employed in the industry were taken to Unalaska. The killing was to commence again in 1808, but, owing to certain circumstances, it was resumed on the Island of St. George only; on St. Paul's Island no seals were killed that year or the following year, and even the year after that only half the usual number of seals were taken on that island.* After these close years, i.e., on St. George's Island from 1808, and on St. Paul's Island from 1810, until 1823, the killing went on uncontrolled on both islands; so little thought was taken for the future that even the sekatch were killed for their furs, while the cows perished by hundreds in the battues and on the way from the rookeries to the place of slaughter.

It was only in 1822 that Muravieff (Chief Manager) gave orders for some of the young seals to be spared every year for the increase of the species. But the overseer of the Pribyloff Islands, instead of sparing 50,000 or 40,000 of them as Muravieff wished, spared only 8,000 or 10,000 in the course of four years. Chistiakoff, who succeeded Muravieff as Chief Manager of the Colonies, thinking that the number of fur-seals must have increased in consequence of the measure adopted by Muravieff, and being assured by the Overseer of the Pribyloff Islands that the number of seals on St. Paul's Island had at least doubled during these four years, gave orders for 40,000 to be killed each year. In 1828 the new Overseer of the Pribyloff Islands, although he did his best to kill as many seals as possible (i.e., to exterminate the species), only succeeded in taking 28,000.

As it was evident that under this system the number of fur-seals was rapidly diminishing, orders were given that great care should be taken in separating the full-grown and young females from the seals to be slaughtered, and that, even of the seals which it was permitted to kill, as many as possible should be spared. In spite of these precautions, however, the number of seals remained stationary, instead of increasing. At last, in 1834, the Board of Management of the Company, convinced by the powerful arguments of Baron Wrangell, decided to sacrifice immediate profits, and to issue a new order, in accordance with which only 4,000, instead of 12,000, fur-seals are now taken on St. Paul's Island.

No seals were taken on St. George's Island in 1826 and 1827, and since then great care is taken, and great economy practised, in the pursuit of the fur-seal industry.

It appears, then, that it was not till 1805, that is, not till after the union of the Companies, that any attention was paid to the preservation of the fur-seal species.

It also appears that all half measures are useless, or at least that they only to a certain extent help to preserve the species, and that only the measure last adopted is, under present circumstances, really effective. And if the system now adopted by the Company remains in force for fifteen years, i.e., till 1849, we can say with certainty that the fur-seals will be three times as numerous as they now are, and that, with good management, they will long continue to yield large profits. On the other

* Probably this is the chief reason why the number of seals is now so much greater on St. Paul's Island than on St. George's, on which latter island there were, before the close years, almost as many seals as on St. Paul's. There can be no doubt that the preservation of the fur-seal species is in great part due to Resanoff's wise measure; but for his action the Company might long ago have been deprived altogether of these valuable animals, already so rare and soon to be much rarer still.

hand, if the Company prefer immediate profits, the fur-seals will very soon become extinct. This is proved by Table No. 2 annexed to this volume.

Nearly all the old navigators are of opinion that to establish close years, i.e., not to kill any fur-seals for several years, does not have the effect of increasing their numbers, but entails the permanent loss of the animals. In support of this argument they state that after the close years there are always fewer fur-seals than there ought to be, e.g., on the Island of St. George there were taken in the first year, after the two close years, only 4,778, instead of 10,000 or 8,000, the take in the year preceding the close years having been 5,500.

This argument, however much force there may appear to be in it, is quite fallacious, firstly, because it is impossible that any species of animal can become extinct if left to itself, and, secondly, because very many here have been of opinion, and have considered it to be an undoubted fact, that the fur-seal cows begin to bear young in their third year, i.e., after the expiration of two years from their birth. As none of the close periods known here lasted for more than three years, there was no time to see a real increase. As a matter of fact, if we carefully consider all the results of the close times, we shall see that the fur-seal cows do not begin to bear young until the fifth year from their birth. This is proved by the following considerations:—

(a.) On St. George's Island, after the first close period, the number of seals had diminished by one-fifth in 1828, and continued to diminish in the same proportion in each of the three following years; in the fifth year after the close period there was no diminution; in the sixth year there were one-twelfth more seals than in the preceding year; and in the seventh year one-seventh more seals than the year before.* This shows that the females born in 1828 did not begin to bear young until the fifth year; and if we consider the fact that the greatest increase took place after six years, it is evident that not every female bears young even in the fifth year after her birth.

(b.) It is well known that the male fur-seal cannot be a sekatch before he is 6, or at least 5 years old. How then can the females bear young before they are 4 years old?

(c.) If the male fur-seal cannot be a sekatch before he is at least 5 years old, then, if we accept Buffon's saying, that "an animal may live seven times the period necessary for it to attain maturity," the fur-seal sekatch may live not less than thirty years, and the female not less than twenty-eight years.† If we accept Buffon's dictum, and infer from it that "an animal attains maturity (and is therefore able to propagate its species) only after it has completed the seventh part of its life," it follows that a fur-seal cow cannot bear young till she is 4 years old.

There can therefore be no doubt that the fur-seal cows begin to bear young only in their fifth year, i.e., only after they are 4 years old, and not in their third or fourth year. It may, indeed, be admitted that some females bear young in their fourth year; but that is the exception, not the rule. In order to convince ourselves that the cows cannot bear young in their third year, we have only to look at the 2-year-old female and compare her with the sekatch and the cows; we shall then see that it is impossible.

Do the fur-seal cows bear young every year? How many times in their life do they bear young? These questions are very difficult to answer, because no observation is possible. It is thought, however, that, while the cows are still young, they bear every year, and, as they grow older, only every other year; consequently, they may, under ordinary circumstances, produce in the whole course of their life from ten to fifteen pups, or even more. This opinion is founded on the fact that an excessive number of cows without pups has never been observed in any year except 1832; and it cannot be maintained that the cows which are not about to become mothers do not come to the Pribyloff Islands at all, because such cows are seen there every year. But however great the number of cows without pups may be, the opinion of the old navigators, founded on observation, is that we cannot go wrong if we estimate that not more than one-fifth of all the cows are without pups. However, to avoid going wrong myself, or leading others into error, I have put the number at one-third, in my calculations of the increase of the fur-seals.

* See Table No. 1.

† This view is confirmed by the observations of the old navigators, and especially of Shaysnikoff, one of the best Creoles, who, on arriving at St. Paul's land in 1817, noticed a certain sekatch (remarkable for its bald head) which at that time already had a large herd of cows, all of which the active old sekatch possessed. From this it seems evident that this male had become a sekatch more than five years before, and that he was, at the time of Shaysnikoff's arrival, not less than 10 years old. This sekatch continued to come to St. Paul's Island every year for the next fifteen years, i.e., till 1832, and always established himself on the same spot; and it was only during the last few years that the number of his cows began to diminish.

There is one other question of great importance in connection with the estimating of the increase of the fur-seals, viz., "Of the young fur-seals born in any one year, what proportion are males?" and "Is the proportion of males to females always the same?"

If we consider the number of bachelor seals which accumulated during the close years 1822, 1823, and 1824, on St. Paul's Island, and 1826 and 1827 on St. George's Island, we find that the numbers of the bachelors vary considerably; for instance, on the Island of St. Paul, in three years, 11,000 fur-seals were spared, and in the three following years 7,000 bachelors were taken, i.e., almost two-thirds of the number of those spared; while, on the other hand, on St. George's Island, after 8,500 fur-seals had been spared in two years, less than 8,000 were taken, i.e., a little more than a third of the number spared.

How are we to account for this inequality? Is the number of bachelors or males born sometimes greater and sometimes less? Or are there years in which the number of females which do not bear young is very great? Probably both these questions must be answered in the affirmative.

I have, therefore, come to the conclusion—and my opinion agrees with that of the sealers—that half of the seals born in any given year are males and half females.

In proof of many of the above statements in regard to the fur-seals, I append Table No. 1, which shows the number of fur-seals taken on the Pribyloff Islands from 1817 to 1838 (see the end of the volume.)

This Table justifies the following conclusions:—

1. There is not a single normal year in which the number of fur-seals taken is equal to the number of those killed in the preceding year; but less are taken every year.
2. The decrease in the number taken is not uniform; sometimes one-sixteenth less are taken, sometimes one-tenth less, sometimes one-fifth, and sometimes even one-seventh less; but on an average *one-eighth* less.
3. Therefore, if the killing is continued in the ordinary manner, the whole fur-seal species may become extinct in fifteen years.
4. The decrease is generally less when in the preceding years the number of bachelors has been greater (i.e., when the young seals have not all been killed); the decrease is greater when the number of bachelors has been less.
5. The number of bachelors is the true criterion of the number of fur-seals, i.e., if the number of bachelors increases, the number of young cows increases also, and *vice versa*.
6. The bachelors do not separate from the herd or collect in distinct herds till the third year from their birth, as appears from the numbers spared on the Islands of St. Paul and St. George (1822, 1823, and 1824, and 1826, 1826, and 1827, and 1826 and 1827).
7. The decrease in the number of fur-seals on the Island of St. George, after two close years (1826 and 1827), continued for two years longer, and always in the proportion of *one-fifth*.
8. In the fifth year after the first close period the decrease may be said to have ceased; in the sixth year there was already an increase of one-twelfth, and in the seventh year there was an increase of *one-seventh* as compared with the lowest figure; during the three following years the number of fur-seals was stationary.
9. If there had been no close period on St. George's Island in 1826 and 1827, then, if we estimate the decrease at only *one-eighth* (see paragraph 2), there would not have been a single fur-seal on St. George's Island in 1840 and 1842. This is shown by the following Table:—

Year.	Number of Seals.	Year.	Number of Seals.	Year.	Number of Seals.	Year.	Number of Seals.
1825	5,500	1829	2,468	1833	1,360	1837	700
1826	4,400	1830	2,160	1834	1,190	1838	580
1827	3,520	1831	1,890	1835	1,040	1839	500
1828	2,816	1832	1,554	1836	850	1840	400

During the last years the decrease must be estimated at more than one-fifth, because the smaller the herd the fewer will be the sekatch, who are the defenders of

the herd, and therefore the sooner will the "kasatki" (killer-whales) be able to exterminate them.*

10. Consequently, a period of two close years prolonged the existence of the fur-seal species for more than ten years, and the Company was fully compensated for the loss it suffered during the close period (about 8,500 seals); for if the Company had not established a close period in 1826 and 1827, it would certainly not have obtained more than 24,000 seals from 1826 to 1838, i.e., during twelve years, but having established a close period for only two years, it obtained 31,576 seals in ten years, and, moreover, would be able to obtain over 15,000 more without any close period.

11. If, then, on St. George's Island, by sparing such a small number of fur-seals (about 8,500) for such a short period, i.e., for two years, such a great advantage has been obtained, how much greater will be the benefit to be derived from the last measure introduced by the Chief Manager of the Company on the Island of St. Paul, where seals have been spared for four years, and more than 30,000 fur-seals are now left to propagate the species.

I append a Table showing the number of fur-seals which will be produced in fifteen years from 7,060 seals spared on St. Paul's Island in 1835 (see Table No. 2 at the end of this volume). This Table is interesting, even if no conclusions are drawn from it.

In 1835, by order of the Chief Manager, a close period was established, or rather a certain number of fur-seals were spared on the Island of St. Paul, after 12,700 fur-seals had been taken in 1834, the preceding year. If the close period had not been established, about 12,200 seals would, under ordinary circumstances, have been taken on the whole island in 1835, estimating the decrease at only one-twenty-fifth; but instead of 12,200, only 4,052 were killed; consequently, in 1835, 8,148 young seals, male and female together, were left to propagate the species.

In drawing up the Table of the increase of the fur-seals, however, I have allowed for an average decrease, i.e., a decrease of one-eighth; according to this calculation, the number of young seals spared is at least 7,060.

Of these 7,060 young seals, I reckon 3,600 as females, i.e., I allow for rather more females than males.

Of the new cows born after the establishment of the close period, I estimate that one-half have pups in the first year in which it is possible for them to bear young, and that two-thirds have pups in the subsequent years.

The females, after twelve years from the time they first bear young, i.e., when they are 18 years old, must decrease in numbers from natural causes, and when they are 22 years old they cease bearing.

Of the young seals born in the fifth year after the establishment of the close period, and in subsequent years, I estimate that one-half are females, and the number thus obtained is inserted in the Table, while the males or bachelors are included in the totals.

It appears from Table No. 2 that—

1. In 1850 none of the old cows (i.e., cows which were capable of bearing young in 1835) will be living (estimating their decrease at one-eighth each year).

2. During the first four years after the 7,060 young seals have been spared, i.e., until the new cows begin to bear young, the number of young fur-seals will generally diminish.

3. After six years the number of young seals will be equal to the number spared, i.e., about 7,000. The number will not be doubled till after twelve years have elapsed, and it will be trebled after fourteen years; fifteen years after the establishment of the close period we shall have in the first year 24,000, in the second 28,000, in the third 32,000, in the fourth 36,000, in the fifth 41,000; that is 160,000 in the five years. After that, if economy is practised, i.e., if one-fifth of the seals are spared, it will be possible to obtain 32,000 annually for ever, or at least for a very long time.

4. In addition, it will be possible to obtain in the course of the fifteen years following the establishment of the close period from 60,000 to 70,000 bachelors, which, together with the 160,000 young seals, make up 230,000.

* The Overseer of the Island of St. George himself saw some "kasatki" † (killer-whales) tear several seals to pieces in a very short time near the shore of the island.

† [In another part of the book Veniaminov says that the "kasatka" (killer-whale) is one of the twelve kinds of whales known in Aleutian waters, and is called by the natives "aglook."—TRANSLATOR.]

5. If no young seals were spared the whole fur-seal species would become extinct in fifteen years, and during that period, whatever efforts were made, not more than 50,000 seals altogether could possibly be obtained.

I have to observe that the estimates in the Table with regard to the increase of the fur-seals are most moderate, and that in estimating the decrease of cows the average decrease has been taken. Moreover, only 4,860 young seals were killed on St. Paul's Island in 1886 and 1887, instead of 7,900; accordingly, in two years 1,500 cows were spared on that island, which are not taken into account in the Table, and from which a large number of seals may be obtained.

In order to show that the principles on which my estimate of the increase of fur-seals on St. Paul's Island is based are sound, I annex a similar Table with regard to the numbers obtained from the fur-seals spared on St. George's Island in 1826 and 1827. This Table is drawn up on the same principle as Table No. 2, and clearly shows the correctness of my estimates. (See Table No. 3.)

extinct
are than

crease of
ows the
illed on
s 1,500
ole, and

of fur-
gard to
26 and
y shows

(Table No. 1).—Showing the Number of Fur-Seals Killed on the Pribyloff Islands from 1817 to 1838.

ON ST. PAUL'S ISLAND.

	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	Total.	
Fur-seals ..	47,568	65,332	40,310	39,700	35,756	27,900	23,300	18,850	21,450	20,550	17,750	16,900	16,300	14,650	12,500	12,650	12,850	12,400	5,552	2,840	2,020	..	
Beckons ..	..	..	..	..	..	250	800	1,000	3,150	2,700	1,950	1,550	950	550	450	500	350	300	100	1,200	2,300	..
Total ..	47,568	65,332	40,310	39,700	35,756	28,150	24,100	19,850	24,600	23,250	19,700	18,450	17,250	15,200	12,950	13,150	13,200	12,700	5,652	4,040	4,320	464,259	
										Spaced for breeding ..												Scale spaced for breeding ..	
										2,700												6,000 7,750 7,000	

ON ST. GEORGE'S ISLAND.

	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	Total.
Fur-seals ..	12,328	13,224	11,974	10,520	9,245	8,319	5,775	5,550	5,500	{ Spaced for breeding }		2,778	2,582	2,545	2,981	2,151	3,151	3,000	2,725	2,450	2,450	..
Beckons ..	..	..	..	..	..	..	..	..	..	..	..	1,900	1,079	269	103	145	61	51	53	100	132	..
Total ..	12,328	13,224	11,974	10,520	9,245	8,319	5,775	5,550	5,500	..	..	4,778	3,661	2,814	3,084	3,296	3,212	3,051	2,778	2,550	2,582	114,685
Total for both islands ..	60,183	59,556	52,225	50,220	44,995	36,469	29,273	25,400	30,100	23,250	19,700	23,228	20,311	18,034	16,034	16,446	16,412	15,751	6,380	6,500	6,802	576,224

Total	7,660	6,303	3,500	4,320	5,490	7,800	8,500	9,700	10,700	12,000	13,000	16,000	18,000	21,500	24,700	28,200	32,250	34,400	41,640	40,300	32,700
-------	-------	-------	-------	-------	-------	-------	-------	-------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

From this Table it appears that—(a) From 3,500 females it will be possible to obtain in the 10th year 24,700 fur-seals; in the 16th year still more [see] and in the 20th year 41,640. (b) In the 31st year there will be a decrease, that is, unless in the 16th and following years some young seals are spared for breeding; if a certain number are spared every year, there will not be less than 20,000 seals annually in the succeeding years.

(Table No. 3.)—Showing the Gain of Fur-Seals on the Island of St. George, drawn up on the same principles as the preceding Table.*

Years.		1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
1	1826	1826.	1827.	1828.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.
	1826	2,200	Females	obtained	from	them	450	700	700	700	700	700	700
	1827	Gain	2,059	Ob- tained	from	from	them	360	600	600	600	600	600
3	1828	from old females	females	1,700	1,500	1,200	1,000	700	550	400	250	100	50
Total	Females	..	2,200	1,700	1,500	1,200	1,450	1,760	1,850	1,700	1,550	1,400	1,350
	Batchelors	..	2,200	1,600	1,500	1,200	1,450	1,760	1,800	1,700	1,500	1,500	1,400
Total		..	4,400	3,300	3,000	2,400	2,900	3,520	3,650	3,400	3,050	2,900	2,750

THE actual Take of Fur-Seals was as follows:—

Years.	1826.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	Total
Number of fur-seals	..	4,778	3,661	2,334	3,084	3,212	3,051	2,228	2,550	2,482	31,476

From this Table it appears that, up to the year 1833, the take ought to have been, according to the estimate .. 30,870
The actual take was 31,476

Difference 606

The reason for the difference is that the estimate of the increase was too low.

* And confirming that Table is a remarkable manner.

11
im
is
nu
ma
pu
Th
re
vi
ne
ev
it
an
no
an
ty
se

TRANSLATION FROM VENTAMINOF.

p. 375 of Russian Text.

"Do the females bear every year; and how often in their lives do they bear?"

"To settle these questions is very difficult, for it is impossible to make any observations on the subject, but it is thought that the females in their early years bear annually, and as they get older every other year; thus they may have under ordinary circumstances from ten to fifteen pups in the whole course of their lives, and even more. This opinion is founded on the fact that (except in one year, 1882) no very great number of cows has ever been seen without pups, but it cannot be said that unpregnant cows never visit the Pribilof Islands, because such are seen every year. As to the number of cows which have no pups, it may be assumed with certainty, according to the opinions and the ocular observations of the old *travellers* that not more than one-fifth of the adult females that are seen are barren; still, in order not to lead others as well as myself into error in my estimates of the increase of the seals, I estimate a third (as barren).

Pour traduction conforme

(s) Kaminsky.

Attache au service de la presse et des
Traducteurs du Minist. des. Aff. Etrangeres.

1

Copy.

TRANSLATION FROM VERIANINOF.

p. 371 of Russian Text.

Nearly all the old *travellers* think and assert that sparing the seals for some years ("Zapooskat kotov")--i. e. not killing them for some years, does not contribute in the least to their increase, and only amounts to losing them forever. They prove this by the fact that after close times there always have been fewer seals than there should have been, as, for instance, on the island of St. George, after a close time of two years for 5,500 seals instead of taking 10,000 or 8,000 in the first year, as they had hoped, only 4,778 were taken."

Pour traduction conforme

(Sd) Kaminsky

Attache au service de la presse et des
Traducteurs du Minist. des Aff. Etrangeres

(No.

the
chan

Trade
Finance
office
foreign
secret
men

oper
near
to p
Amer
its e
nece
lying

Islam
Sikh
Kad
Man
she
retu

to 6
woul
vessel
forei
inba

in M
the 1

by t
the 1

adv
taken
vessel
be a
nece
defin

Yaku
from
cont
befo
spil

PROCEED
12 JUN 52
PRINTED IN U.S.A.
CONFIDENTIAL

no 10
Cut

14

(Translation from the Russian, by J. Michell.)

No. 1.

Copy of Communication of Minister of Finance to Minister of Marine, dated April 9, 1820.

(No. 8.)

BY a decision of the Committee of Ministers, Imperially confirmed, on the 8th day of July, 1819, the Minister of the Interior was, among other things, intrusted to collect information respecting future changes in the organization of the Russian-American Company.

Subsequently, when, with the Imperial sanction, the Department of Manufactures and Interior Trade, jointly with the Russian-American Company came under the jurisdiction of the Ministry of Finance, and when turning my attention to this subject I observed, from various Reports of the head office, as also from the observations of commanders of vessels who had been in those parts, that foreigners, especially citizens of the United States, visit our Colonies in their vessels, and by open and secret trade with the native inhabitants, and by their instigations undermine the welfare of our Settlements, more especially by supplying the islanders with various weapons.

The recent establishment of the Colonies, and more especially the inadequacy of the measures in operation for averting those drawbacks, owing to the small number of Russians spread over an area of nearly 4,000 versts, which do not yet allow the Company to occupy all the places in such a manner as to prevent foreigners from having illicit communication with and exercising influence over the Americans and islanders. In this matter, taking into consideration that the interests of the Company, its establishment and object are solidary with the interests of the Government, it would appear almost necessary for the protection of our possessions in the north-western part of America and the islands lying in the ocean to maintain there uninterruptedly two vessels of the Imperial fleet.

This proposal, in my opinion, could be more conveniently carried out in the following manner:—

By leaving in the month of August or September, one of these vessels of war could reach Sitkha island and the other Petropavlovsk Harbour, in April or May 1821. The first, after discharging at Sitkha everything destined for that place, would proceed northwards along the American coast to Kadiak, and if at this place she receive no special information respecting foreign smugglers from the Manager of the Colonies of the Russian-American Company which might make her to alter her course, she could continue to proceed westward, and having inspected the Aleut and Kuril Islands, would return for wintering in Petropavlovsk Harbour.

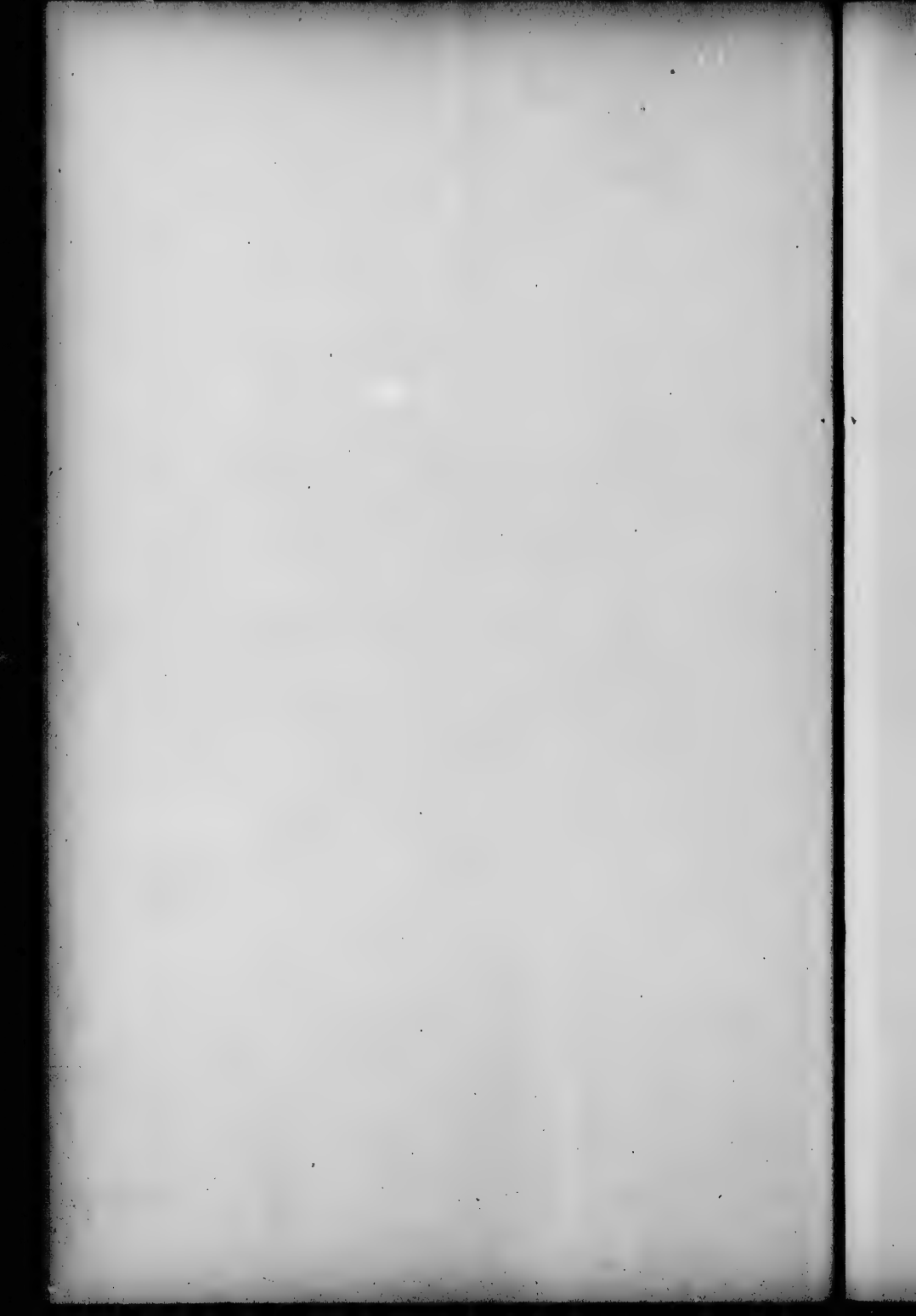
The other vessel, on the contrary, after examining the eastern coast of the Kamchatka Peninsula to 62° north latitude, and the western coasts of America from that latitude to the Island of Unalashka, would visit Kadiak and thence return to winter at Sitkha. The object with which these two armed vessels would cruise in the above-stated directions will be to protect our Colonies and to prevent foreign ships having illicit relations both with the establishments of the Company and the native inhabitants of these countries.

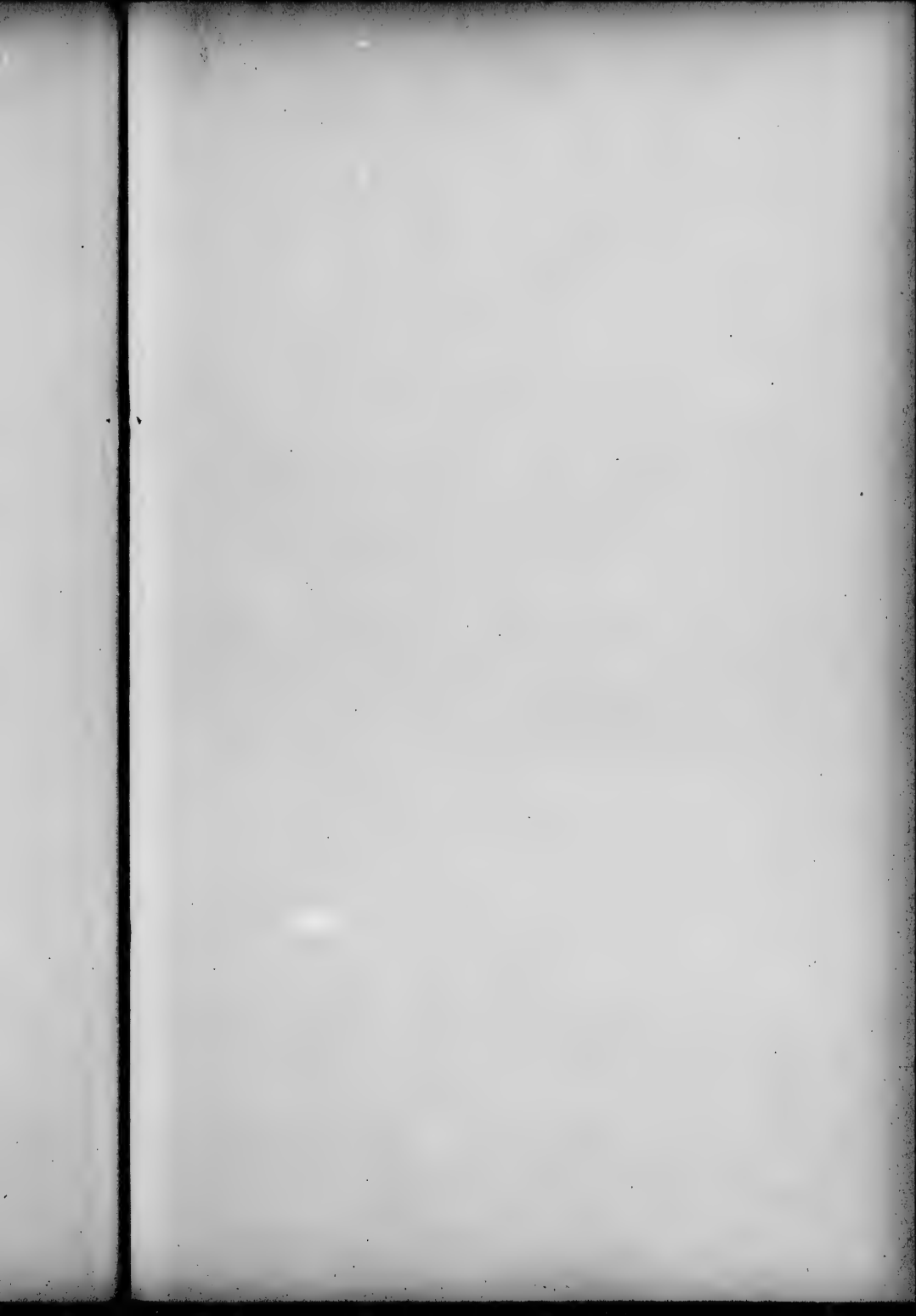
If two such vessels be dispatched in the following year of 1821 from our Baltic ports, they would in May or June 1822 arrive in time to relieve those sent in 1820, and then the latter could return in the middle of the year 1823.

In this manner two armed vessels would be present uninterruptedly in the Colonies established by the Company and be able to protect them, and this, besides other advantages, would afford officers of the Imperial navy the best opportunity for practically perfecting themselves in navigation.

In bringing this to the notice of your high Excellency, I consider it superfluous to enumerate the advantage of dispatching these vessels; the expenses, however, attending such a measure remain to be taken into consideration. For this purpose it is necessary to know how much the armament of the vessels and the maintenance of their crews will cost the Crown, and also whether the said vessels would be able to take, in addition to provisions and tackle for their own use for nearly three years, some stores necessary for Kamchatka, and Okhotk, and, if so, the extent of the weight of the stores should be defined. This information would also be useful in other respects.

The Siberian Governor-General in his representations respecting the distressed condition of the Yakutsk region, attributes its main cause to the transport of Government and private weighty goods from Yakutsk to Okhotk, and notwithstanding that these are now transported, since 1810, by contract, in lieu of the compulsion that had previously prevailed, the Yakuts, almost entirely ruined before this change, and more particularly by recurring cattle plague epidemics, are still hardly able to fulfil this arduous duty.





If your high Excellency will find it possible to dispatch yearly two vessels as above stated, and if they, besides their own provisions, can take some for the ports of Okhotak and Petropavlovsk, this would then serve as a great alleviation for the Yakuts, and save the Crown considerable expense.

For a better consideration of this matter, it would appear necessary to ascertain the nature and quantity of the naval stores yearly dispatched from Yakutsk to Okhotak, and the number of horses employed in their transport during the past years. Having thus explained my idea, I submit all the foregoing to the consideration of your high Excellency, while humbly requesting that I be informed of your opinion when the above information is communicated to me, in order that such opinion may serve me as a foundation for the measures I intend to recommend in the event of the renewal of the rules and privileges of the Russo-American Company existing under Imperial patronage.

Correct.

(Signed) ZELENIK, *Chief of Chancery.*

No. 2.

(Copy.)

Ministry of Finances, General Chancery, to the Board of Management of the Russian-American Company.

(No. 9. Secret.)

April 10, 1820.

THE Report of the 14th November last of the Board has hitherto remained unanswered, owing to the non-receipt of requisite information concerning the contract concluded with the Englishman Pigott, to which the Board referred in that Report.

This information was supplied to me on the 8th of last month; together with it I received detailed information of the appointment that had in due time been made by the Government of the Court Councillor Dobell to reside on the Island of Manilla, and of the proposal of that official to dispatch from thence in spring a vessel to Kamchatka with supplies of provisions, in order to prove to the Government how much cheaper it would be to obtain supplies from the Philippine Islands; Mr. Dobell sought permission also to dispatch from Manilla to Cronstadt two vessels with tea and other Chinese goods.

All these matters I submitted to the Emperor, and received the following Order from His Imperial Majesty:—

1. That the Contract concluded with the Englishman Pigott be not confirmed by the Government, but inasmuch as whale fishing may be useful as a means for providing the inhabitants of Kamchatka and Okhotak with sustenance in the event of a failure of the capture of fish, and serve as a new branch of trade which might be productive of considerable profit to the Russian-American Company, His Imperial Majesty was desirous that the Company should direct its attention to that matter, and employ for that pursuit one vessel, supplying it with all necessary implements, and choosing for it the best officers and sailors; and in order to furnish the Company with the means of securing the most skilful foreman at starting, Dobell is to be instructed to endeavour to obtain the same, on condition that they, in addition to a fixed salary, will receive some remuneration for every pound of whale or other blubber secured by them.

2. That the provincial authorities of Irkutsk be ordered to permit no foreigner, but only Russian subjects, to be inserted in the Merchants' Guild, or to settle at Kamchatka or Okhotak; as also to prohibit all foreign merchant-vessels to trade at these places, or to put into the ports of Eastern Siberia, with the exception of cases of distress, in which case must be taken that they do not discharge or sell anything to any one, under pain of forfeiture of the whole ship. Moreover, that the Englishman Dobell, at Okhotak, and Dobell's agent at Kamchatka, be informed through the same authorities that the Government does not allow them to remain in those places, and still less to fix themselves there in houses, or to acquire other immovable property. A period of grace is therefore to be granted them, which is to be fixed by the local authorities, both for the sale of their property, as also for their departure. Mr. Dobell shall receive orders to the effect that the vessel which he proposed sending from the Philippine Islands to Kamchatka will on this occasion be received, and the sale of the goods and provisions brought by her permitted; but that in future he should abstain from sending such vessels, and confine himself to supplying the vessels of the Government or those of the Russian-American Company sent to Manilla for stores and provisions.

3. That Mr. Dobell be refused permission to send two vessels to Cronstadt with tea and other Chinese goods, and at the same time it shall be explained to him that it was and is only expected of him that he should supply information as to the prices at which Chinese goods could be obtained at Manilla, and what productions of Eastern Siberia could be profitably sold there, in order that advantage could be taken of this information when all the commercial operations of the American Company are taken into general consideration. For the fulfilment of such, His Imperial Majesty's Will, I have already communicated with the Governor-General of Siberia, and the Acting Minister for Foreign Affairs has, on his part, given the proper directions to Mr. Dobell.

I now have to propose to the Chief Board of Management of the Russian-American Company the following:—

1. From the capture of whales off the eastern coasts of Siberia the Government anticipate not only the advantages which were pointed out by the Governor-General of Siberia and the Commander of Kamchatka in their Reports Nos. 1, 2, and 3, of which copies are herewith annexed, but seeing that it is of advantage to the Company itself, the Government hope that the Board of Management will not fail to adopt the necessary measures for establishing such a fishery, so far as it can, as quickly as

possible, and that it will, with this view, and without awaiting Mr. Dobell's reply, make inquiries as to the possibility of engaging foremen, experienced in this branch of industry, and purchasing of a vessel adapted for the purpose, endeavouring at the same time to dispatch her if not this year, then the following, to her destination.

2. The Government, while excluding, in the interests of the Russian-American Company, all foreigners from Kamchatka and Okhotak, and even prohibiting their arrival there for trading purposes, expects from the Company that it will, on its part, assist them in supplying this region with all necessities, and, as the Governor-General of Siberia has repeatedly represented, the necessity of relieving the Yakuts in the matter of the land carriage of heavy articles from Yakutsk to Okhotak, the Board of Management, after taking this matter into consideration, shall report to me:—

(a) Respecting the means by which communication between Yakutsk and Okhotak could be established without distressing the Yakuts;

(b) Whether the Company could forward provisions to Petropavlovsk and Okhotak Harbours, especially flour and salt, by means of relations with California or the Philippine Islands for its own requirements, as well as for the Government employés and other inhabitants, using for this purpose a vessel which would remain in those parts and annually perform this service. The Board of Management must also keep in view and estimate whether the maintenance of such a vessel would not lead to too great an enhancement of the prices of the stores she would carry;

(c) Can the Company suggest measures for developing the fisheries as a chief source of sustenance for the poor Kamchadals and inhabitants near Okhotak? and, lastly—

(d) Can the Company dispatch to Kamchatka and Okhotak such articles as are necessary for the use of the local inhabitants, now supplied to them from Irkutsk at exorbitant prices, and which, while not satisfying their wants, tend to their impoverishment?

3. In not allowing Dobell to dispatch two vessels with tea and other Chinese goods the Government had only in view the avoidance of circumstances which might disturb the general march of our Kiakhta trade; on the contrary, if the Russian-American Company will receive from the Philippine Islands Chinese goods in exchange for those which it could not profitably dispose of at Kiakhta, then there is no reason for prohibiting this trade, inasmuch as the Company, taking part itself in the Kiakhta trade, would not wish, by the sale of sea-borne goods, to injure its own interests, which are intimately connected with the Kiakhta trade. In view of this, detailed information respecting the trade with the Philippine Islands has been demanded from Mr. Dobell, so that a correct judgment may be formed as to whether it will be profitable to the Company to exchange at Manila for Chinese and other products the fur goods which cannot be advantageously sold at Kiakhta.

In conclusion, I would inform the Board of Management that the Court Councillor Dobell has not been recognized as Russian Consul by the Spanish Government, because the Court of Madrid found it contrary to its colonial system to admit foreign Consuls into its Colonies; he would, however, be allowed to reside at Manila, and discharge there all the duties of Agents of this description. The appointment of this official was only made for the purpose that he should render in all cases help to our American Company, and of this he has now been again informed in instructions sent to him.

Original signed by—

COUNT D. GURIEFF,

Minister of Finance.

and by—

COUNT JACOB LAMBERT,

Privy Councillor.

No. 3.

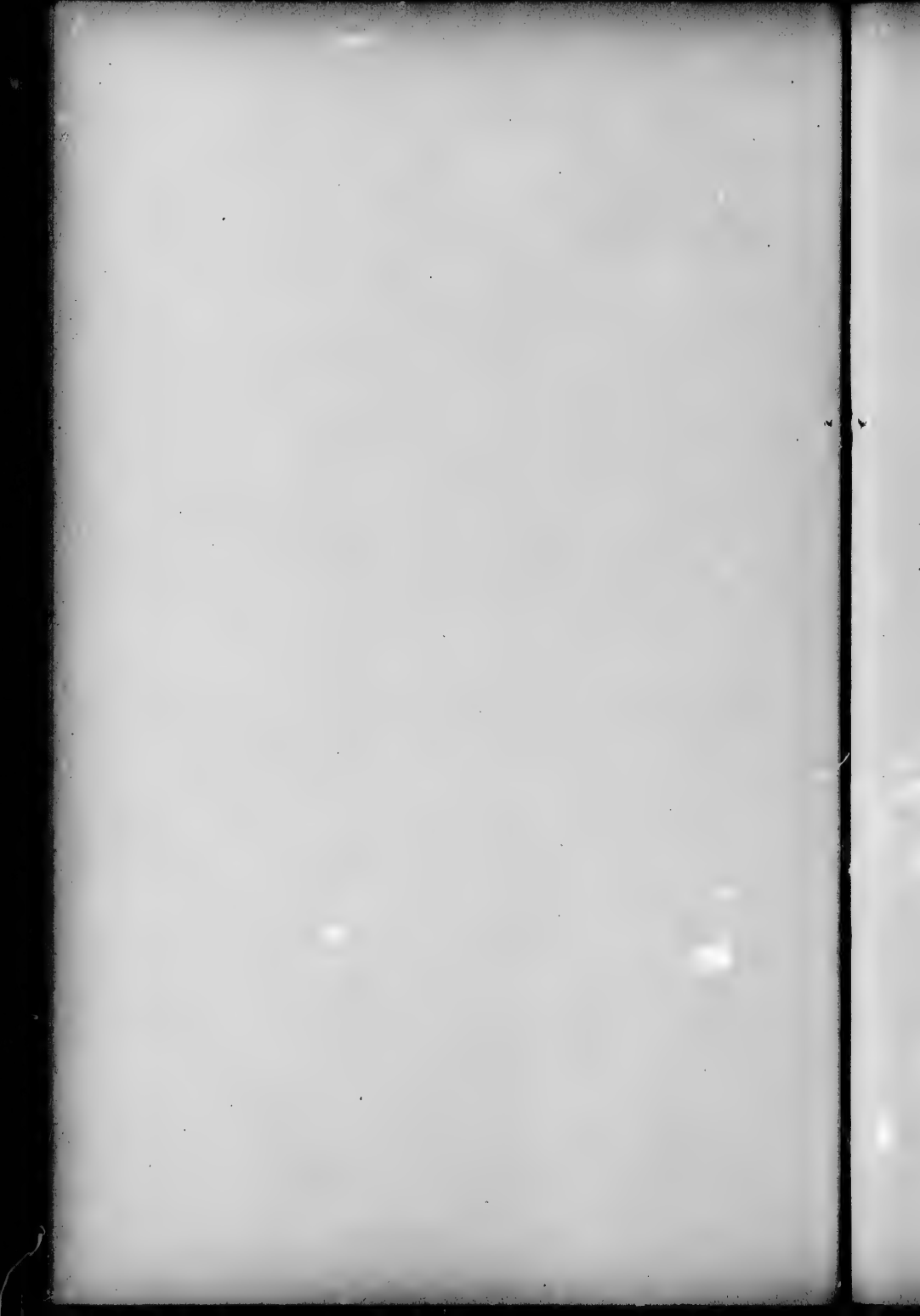
From the Chief Board of Management of the Russian-American Company, under the protection of His Imperial Majesty, to Matvei Ivanovitch Muravieff, Captain-Lieutenant of the Navy, Knight, and Chief Administrator of the Russian-American Colonies.

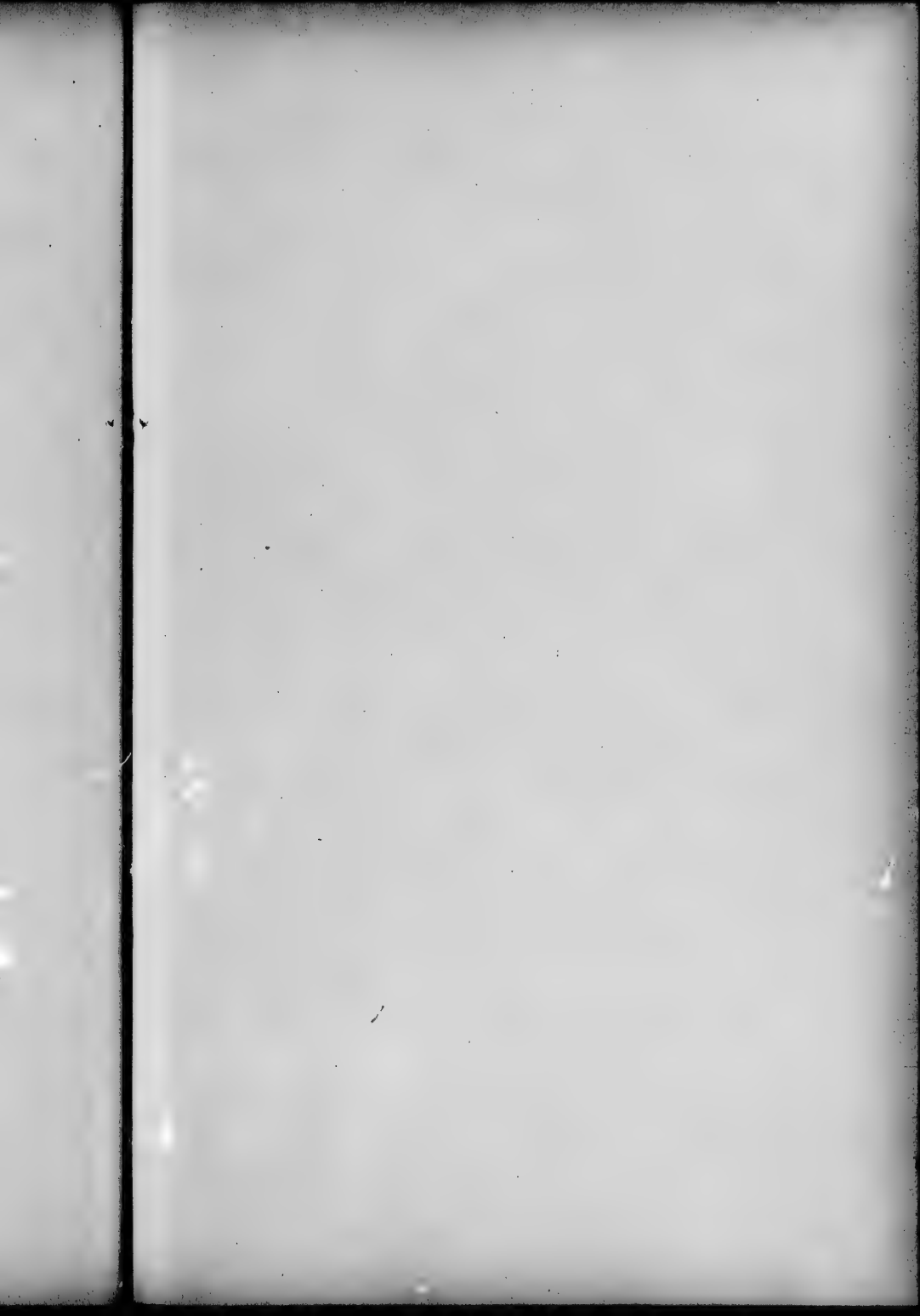
(No. 265. Secret.)

THE Minister of Finance on the 10th of this month communicated to the Board of Management of the Company, in a letter marked Secret, His Imperial Majesty's Order in the following terms:—

1. That the Contract concluded with the Englishman Pigott be not confirmed by the Government.

2. That the provincial authorities of Irkutsk be ordered to allow no foreigners, but only Russian subjects, to inscribe themselves in the guild of merchants, or to settle at Kamchatka or Okhotak; likewise, that all foreign merchant-vessels be entirely forbidden to trade at these places, or to touch at the ports of Eastern Siberia, excepting in case of distress, in which, however, care shall be taken that they shall not discharge nor sell anything to anybody under pain of forfeiture of the whole vessel. At the same time, the Englishman Debis at Okhotak, and Dobell's agent in Kamchatka, shall be informed through the same authorities that the Government does not allow them to reside at those places, and still less to acquire houses or other immovable property; therefore they are to be granted a period of grace, at the discretion of the local authorities, for the sale of their property, as well as for their departure. Mr. Dobell shall be instructed that the ship he proposed to send from the Philippine Islands to Kamchatka is for this occasion accepted, and the goods, as also the provisions brought by her, will be allowed to be sold; but that in future he must abstain from sending such ships and confine himself to supplying with stores and goods the Russian vessels which will be sent to Manila by order of the Government or our American Company.





3. That permission shall be refused to Dobell to send two vessels to Cronstadt with tea and other Chinese goods, this being not in accordance with the views of the Government, and it shall be explained to him that it was and is only expected from him that he should supply information as to the prices at which Chinese goods may be obtained at Manila, and what productions of Eastern Siberia could be profitably sold there, so that advantage could be derived from this information when all the commercial operations of the American Company are taken into general consideration.

Having communicated also to you this Imperial Order, the Board of Management of the Company adds this explanation:—

That the Contract with Pigott, which has not been confirmed, is the same that was concluded on the 18th June, 1819, for ten years by Mr. Rickord, Commander of Kamchatka, and the Court Councillor Dobell, in the name of the Government, on the one side, and the aforesaid Englishman Pigott on the other, for himself and his partners, masters of the American commercial vessels "Davis," "Ebetsa," and "Mika," for whaling and extracting blubber from these, as also from other marine animals, along the coasts of Kamchatka and the whole of Eastern Siberia, in harbours, bays, and on islands, for their sole profit, without payment of duty, and, moreover, with the use of the Russian flag; as also for fishing and exporting fish from Kamchatka under a payment of 50 copecks per pound of the fish caught and salted by them. But this Contract, as it would appear and must be supposed, has been recognized by the Government as an injurious one, it affording no advantage to the inhabitants of Kamchatka and Okhotak; and, moreover, the Kamchadals, who often suffer from a scarcity of fish, arising from an insufficiency of salt and fine days for drying the fish, might perhaps be deprived of 30,000 pounds of fish, which the foreigners would catch annually and carry away.

Having now elucidated the matter of the justly repudiated design of the cunning and intriguing foreigners with whom Dobell apparently was in accord and intimacy through old friendship, and who on the strength of the permission to capture whales and boil down blubber, even from marine animals, would have let loose many ships with every kind of ruffian on board, and they would not so much have frequented the harbours and bays of Eastern Siberia as our Kuril and Aleut Islands, solely for the capture of sea-otters and seals, by which they would have ruined the Russo-American Company, the Board of Management communicates to you its ideas.

The Government having already perceived that the whole object of these designs tended to the evident loss of the Company, and having forbidden foreigners not only to settle but even to trade at Kamchatka and Okhotak where there are authorities, and where supervision can be exercised, you too, likewise, as Commander of the Colonies, taking your stand on this decision of the august patron, can strictly prohibit foreigners who come to you from trading with the Indians, and in case of their not observing this you should boldly arrest the insolent marauders, their ships, and crews, when they have carried on a trade injurious to the Company in places or in islands occupied by it, or when especially they have bartered arms, gunpowder, and lead with the Indians.

They should even not be allowed any access to your ports when you are not forced by want to purchase anything that may be absolutely necessary from them for the Company. In a word, you can assume in the fullest sense the tone of a Government official in charge of all the places occupied by the Company, and this tone would be well suited for dealing with the insolent traffickers. Do not fail to give your orders also to your subordinate officers as to the manner in which they are to deal with foreigners arriving, especially to the Commanders of our vessels dispatched to various places, and who may anywhere discover foreign ships engaged in a smuggling trade. And as the communication of the Minister was accompanied by a copy of a despatch of the present Governor-General of Siberia, which contained many truths and considerations in favour of the Company, the Board of Management forwards you a copy of the same for your guidance in deliberating over the interests of the Company.

(Signed)

MUTAMSO [*], Chairman
BENEDICT KRAMER
ANDREW SEVERIN

} Directors.

(Signed)

ZELLENIN, Chief of Chancery.

(No. 265.)

April 23, 1820.

P.S.—We inform you that the Government has decided to send this summer two vessels round the world, one to winter at Kamchatka, and the other, with you at Sitka, after they have expelled the foreign intruders.

(Signed) [*].

No. 4.

(No. 225.)

Gracious Sir, Matvei Ivanovitch,

WE received with much pleasure your letters of the 20th and 26th July from Okhotak, but with still greater pleasure did we read your just reasoning on many subjects in the interests of the Company; for this we sincerely thank you, wishing you a happy arrival at your journey's end, a sojourn there in good health, and that we should always see in you an efficient servant of the Company.

The remarks made by you to Mr. Rickord, we imagine, were not liked. From the accompanying copy of a Ministerial Paper you will observe how the Government has not only rejected the projects of

Mr. Rickord, Dobell, and Pigott, but has even forbidden them to trade at Okhotak and Kamchatka; ordering at the same time that the foreigners now residing in those parts shall withdraw, and that no foreigners shall in future frequent them. This Government Ordinance you are also bound to observe, and actively to prevent, as far as possible, the visits of foreigners to our Colonies. We only await the return of the Sovereign for the confirmation of the new privileges which have been elaborated in the Ministry; we shall also have Regulations for dealing with foreigners who navigate within Russian limits. You will then inevitably have to act according to these Regulations.

From the same Ministerial Paper you will perceive that the Company is bound to establish whaling, which we now wish to try; but we know beforehand that it will bring no profit, as Kamchatka and Okhotak, being thinly populated regions, require but little whale-blubber, which also cannot be disposed of anywhere else.

In the same Paper you will observe that the Government wishes that the Company should provide Kamchatka and Okhotak with breadstuffs; but this is also for the present declined owing to its impossibility, as, during the "Borodino's" stay at Manila, no means were discovered for disposing of some articles which, in Dobell's opinion, could be profitably dispatched thither; respecting this you will receive detailed information from our travellers, who, it is hoped, have long since reached you, and perhaps may have already started back. It only remains to be hoped that grain may be obtained in California, if the Missions there have not been destroyed. Your communications on this subject will either gladden or chagrin us.

On all the representations made by M. Yanovsky we made our conclusions in the despatches we sent you, and which were accompanied by copies of these documents, forwarded for fear of the loss of the originals, dispatched by the "Borodino."

During the past year no man-of-war was sent round the world by the Government for the protection of our Colonies; two ships are now being sent; their Commanders are Tulubieff and Filatoff, the former being the Senior Officer. On our part we shall send you the "Rurik," under the command of the pilot Klotchko, on condition that this brig returns hither.

You will learn the state of Europe, and that of other countries, from the newspapers and journals we forward to you by the "Rurik," by which vessel we shall write to you again.

Repeating our wishes for your welfare and happiness, we have the honour to remain, with sincere and friendly respect, your obedient servant,

(Signed)

MIKAILO RUDONOFF.
BENEDICT KRAMER.
ANDREW SEVERIN.

(No. 225.)

St. Petersburg, March 31, 1821.

No. 5.

Under His Imperial Majesty's patronage, the Russian-American Company. From Chief Board of Management to the Chief Administrator of the Russian-American Colonies, Captain-Lieutenant of the Fleet and Knight, Matvei Ivanovitch Muraviev.

(No. 420.)

IN order that you may see to what effect orders have been given to all the colonial offices and rulers at Paul and George, a copy of such orders are sent to you herewith for your information, inasmuch as you, being better acquainted than they with the aim of the Company and Government, will sooner respect the Company's wishes, and not being in extreme need of anything from foreigners, will not enter into bartering transactions with them, which have hitherto always involved a loss in regard to the furs bartered with them at prices inordinately low as compared with those existing in Russia.

The Board hopes that you will vigilantly watch over the fulfilment of this order by the other offices, more especially as there will be no necessity for any barter, when every year several vessels will be sent to you by the Company with considerable cargoes.

(Signed)

BENEDICT KRAMER, *Director.*
ANDREW SEVERIN, *Director.*

(Signed)

Chief of Chancery.

(No. 430.)

August 3, 1820.

Inclosure in No. 5.

(Copy.)

Under His Imperial Majesty's patronage. The Russian-American Company, Chief Board of Management.

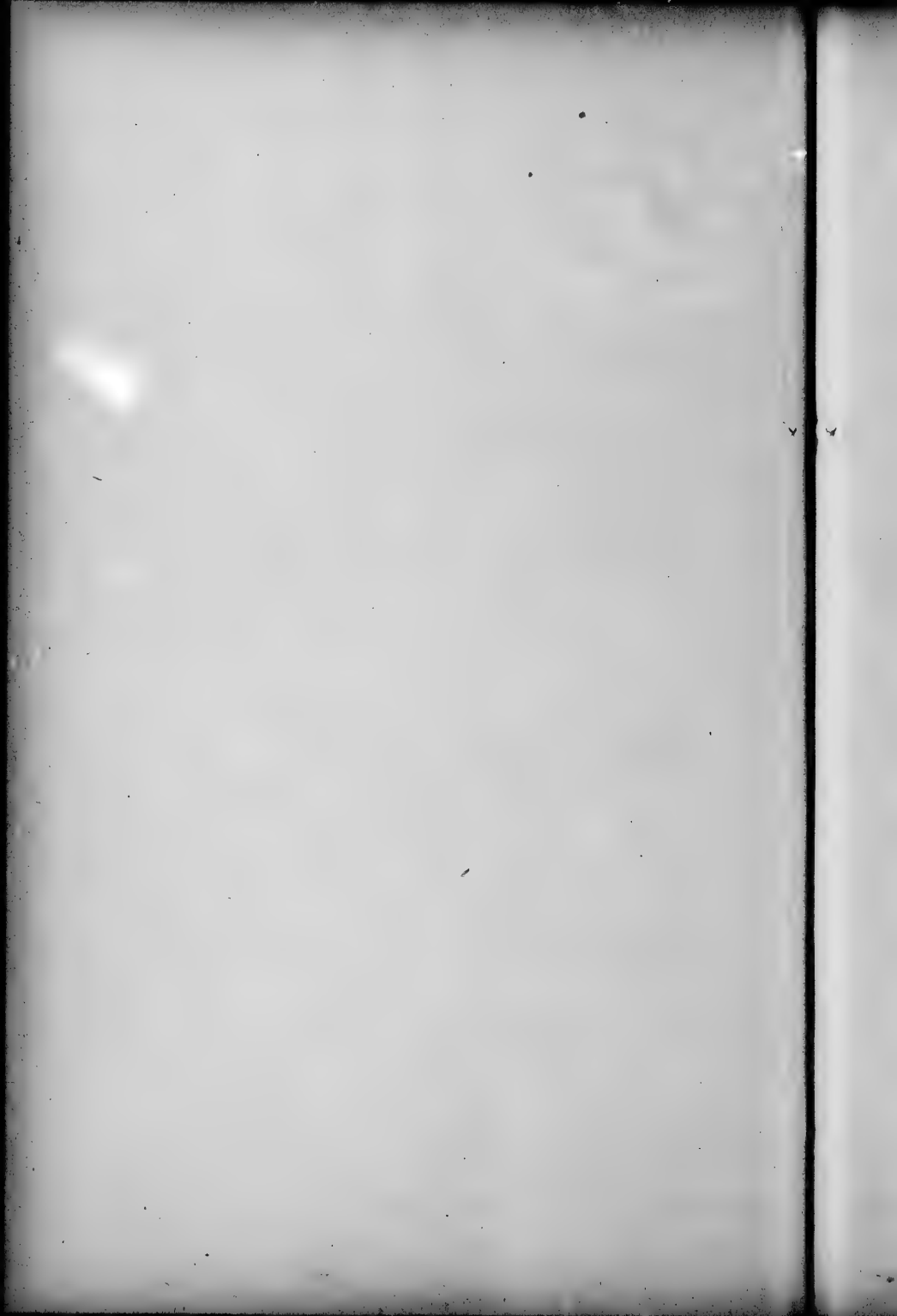
Order to the Kodiak Office.

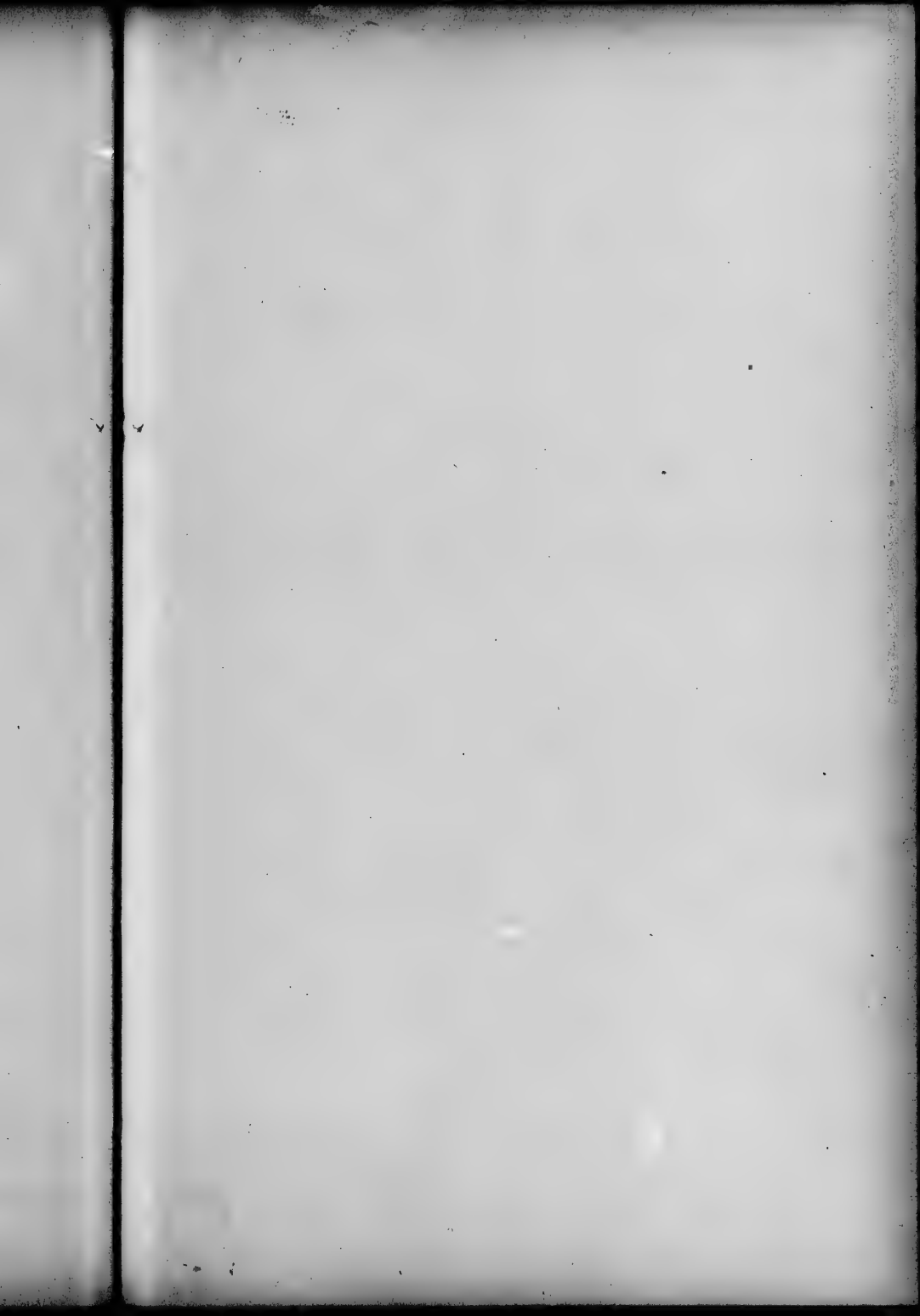
(No. 426.)

THE late Daranoff was repeatedly instructed to abstain, as far as he possibly could, from bartering with the foreigners who resided our Colonies, and that the same order should be observed by the

[B33]

0





offices of Unalashka, and by the Superintendents on the Seal Islands, who were to be informed of the same.

Now that it has been decided to send out from here to the Colonies regularly each year one vessel with all kinds of supplies necessary for men, ships, &c., and as so far back as the years 1816 and 1819 the ships "Kutuzoff" and "Borodino" were sent out with somewhat important cargoes, and as this year, in accordance with the above decision, the "Kutuzoff" will again be dispatched, there is no necessity for any bartering with foreigners; moreover, by will of the Supreme Government, all those foreigners are to be expelled from Okhotsk and Kamchatska who came there for trade, and they are not to be admitted in future; there must be no thought of trade with the foreigners who arrive, and who, under the guise of selling some unnecessary articles of luxury, receive in exchange fur goods, which are valuable for trade at Canton.

The said office is therefore ordered, under the strictest responsibility, not to have the smallest barter dealings with foreigners in furs. Everything that is required shall be demanded from the Novo-Archangelak, or Okhotsk Offices.

(Signed) ZELIANOFF.

Please send off the originals.
August 3, 1820.

No. 6.

Under His Imperial Majesty's patronage, the Russian-American Company. From the Chief Board of Management to the Chief Administrator of the Russian-American Colonies, Captain-Lieutenant of the Fleet and Knight, Matvei Ivanovitch Muravieff.

(No. 175.)

M. YANOVSKY, in his Report of the 25th February, 1820, sub No. 41, describing his inspection of the produce on Paul and George Islands, observes, among other matters, that every year only young male bachelor seals are killed, only brood females, and old and medium-aged males being left for breeding purposes; only the older generation of animals therefore remains, and of the bachelors those that are not killed in autumn are taken in the following spring. In consequence of this, the seal hunting must naturally fall off every year, and with time will be altogether destroyed, as experience goes to show. To prevent this it would be more advantageous to discontinue seal hunting even for one year, and at the same time orders should be given that not more than 40,000 seals on Paul Island and 10,000 on George Island should be killed annually.

He thinks that, under such an arrangement, the seals would never decrease in number. The Board of the Company, although it considers this observation to be just, wishes primarily that this measure should be adopted only when the seals would cease to flock at those two small islands on the north and southward of the rocky ledge which it is proposed to open up. On Paul and George in one of every three years only the first flock of seals might be spared, and even then in turn; for instance, if on one of the islands grace be given to the first arrivals, the hunting should be carried on on the second, and then when the seals are spared on the second, they should be killed on the first during the whole three periods of flocking. The numbers to be killed on both the islands to be as specified above. By this arrangement the men would not be left idle, as they would be able to proceed for rendering assistance to the island on which all the three flocks are being hunted. When the three small northern islands will be opened up and their yield of seals appears promising, then, in Mr. Yanovski's opinion, you should not fail to instruct the men employed on Paul and George Islands to hunt the seals periodically every five years, and every second year to take on Paul Island 40,000, and on George Island 10,000 seals. After the lapse of five years seal hunting should be suspended for one year in order that they might increase in numbers, the northern islets being then utilized. At the end of the year the seal hunting could be recommenced on the scale above mentioned. The adoption of this certain method of preserving the seal fishery would result in a permanent and sure source of profit to the Company, and would serve to maintain the price of the furs in the market.

At the same time, it must be most strictly forbidden to spoil the skins of the animals by excessive drying in bath-houses, when such drying is inevitable during unfavourable weather. When the skins are dried in this manner the Inspectors on those islands must be strictly enjoined to observe that the heat of the baths should be moderate, and they are to be held responsible for the spoiled skins which will not be worth carriage, the Company having formerly been a loser to the extent of 1,000,000 roubles through this.

The skins now brought to Russia are pretty well prepared; it consequently remains to be desired that this will always be the case. The Board will be pleased to receive from you any remarks on the subject of the amelioration of this branch of production which you may be prepared to offer after visiting the islands. But if you will not be able to proceed to them soon, then send instructions by first opportunity that the directions of the Board be carried into effect immediately on receipt of your orders.

(Signed)

MUTAM DUBINOW.
BENEDICT KRAMERS.
ANDREW SEVERIN.

(Signed) ZELIANOFF, Chief of Chancery.
(No. 175.)
March 15, 1821.

No. 7.

Under His Imperial Majesty's protection, the Russian-American Company. From the Chief Board of Management to the Chief Administrator of the Russian-American Colonies, Captain-Lieutenant of the Fleet and Knight, Matvei Ivanovitch Muraviev.

THE Board of Management of the Company has received the ordained Regulations relative to the limits of navigation and order of maritime relations along the coasts of Eastern Siberia, North-western America, the Aleut, Kuril, and other islands, confirmed by His Imperial Majesty the Emperor, and already forwarded to the Ruling Senate for general publication. For your information and observance a printed copy of the same is herewith annexed.

This Ordinance (or Regulation) will be translated into the English and French dialects, and if the Board receive the translations it will forward the same to you, even by Government vessels.

(Signed)

BENEDICT KRAMERS, *Director.*
ANDREW SEVERIN, *Director.*

(Signed)

ZELIANOFF, *Chief of Chancery.*

(No. 510.)

September 7, 1821.

No. 8.

The Russian-American Company, under His Imperial Majesty's protection. From the Chief Board of Administration to the Chief Administrator of the Russian-American Colonies, Captain-Lieutenant and Knight, Matvei Ivanovitch Muraviev.

THE illustrious Count Dmitri Alexandrovitch Gurieff, Minister of Finances, on the 18th of the current month informed the Board of Management of the Company that His Imperial Majesty was pleased, on the 13th day of the current month, to confirm at Porkhov the schemes submitted by the illustrious Count conferring anew on the Company for twenty years privileges and Statutes, single copies of which he forwarded, seeing that these Decrees prove to the Company all the solicitude of the Government for making that institution of still greater utility; and he therefore proposes that the Company should, on its part, adopt all the measures lying within its power for punctually carrying out all the directions prescribed in them, especially by immediately issuing to you, as Administrator of its Colonies, necessary instructions.

The Board of Management having received these Decrees also from the Ruling Senate in copies printed for promulgation, now forward to you herewith ten such copies.

In these Decrees, especially in the Regulations, the Government has set forth all the duties the execution of which devolve on you and through you on the Board of Management itself.

And as the Board supposes, without recapitulating the matters set forth in those Decrees, especially in the rules laid down in sections 35, 39, 41, 43, 44, 46, 47, 48, 49, 51, 52, 53, 55, 56, 57, 58, 59, 60, 62, 64, 67, 68, 69, and 70, that you will, of your own accord, adopt as an absolute rule the accomplishment of the will of the Government, it, therefore, on this occasion confines itself to the expression of the wish that you will, by gratifying the Government, secure thereby for yourself its respect, and thus provide the Board with opportunity for constantly bringing to its notice your meritorious proceedings.

Please supply with the accompanying copies the Novo-Archangelak, Kadiak, Unnalashka, Ross Offices, and the branches on the northern seal islands, giving them detailed instructions, in accordance with local circumstances, with which they are bound to conform themselves in time and manner. It is requisite that they should receive detailed instructions, in order that in carrying them out they should not act diversely and in perplexity to the embarrassment of yourself and the Company.

The Board sincerely congratulates you, as its coadjutor, on this manifestation of Sovereign favour towards the Company.

Future letters to you in reference to the foregoing subject will not fail to contain explanations on points which may be thought of, and which it may be considered necessary to mention. Time is wanting to do this now.

(Signed)

BENEDICT KRAMERS, *Director.*
ANDREW SEVERIN, *Director.*

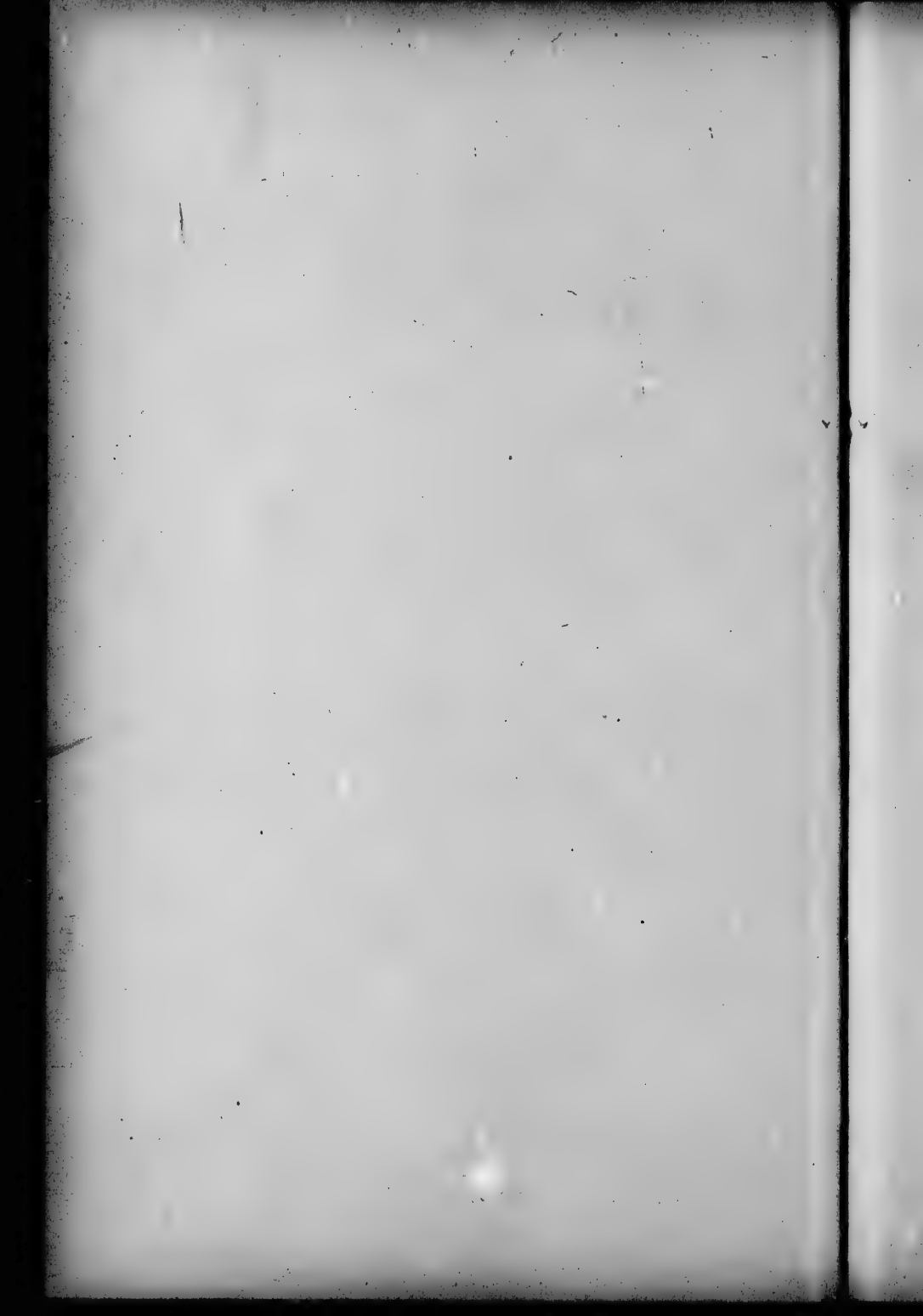
(Signed)

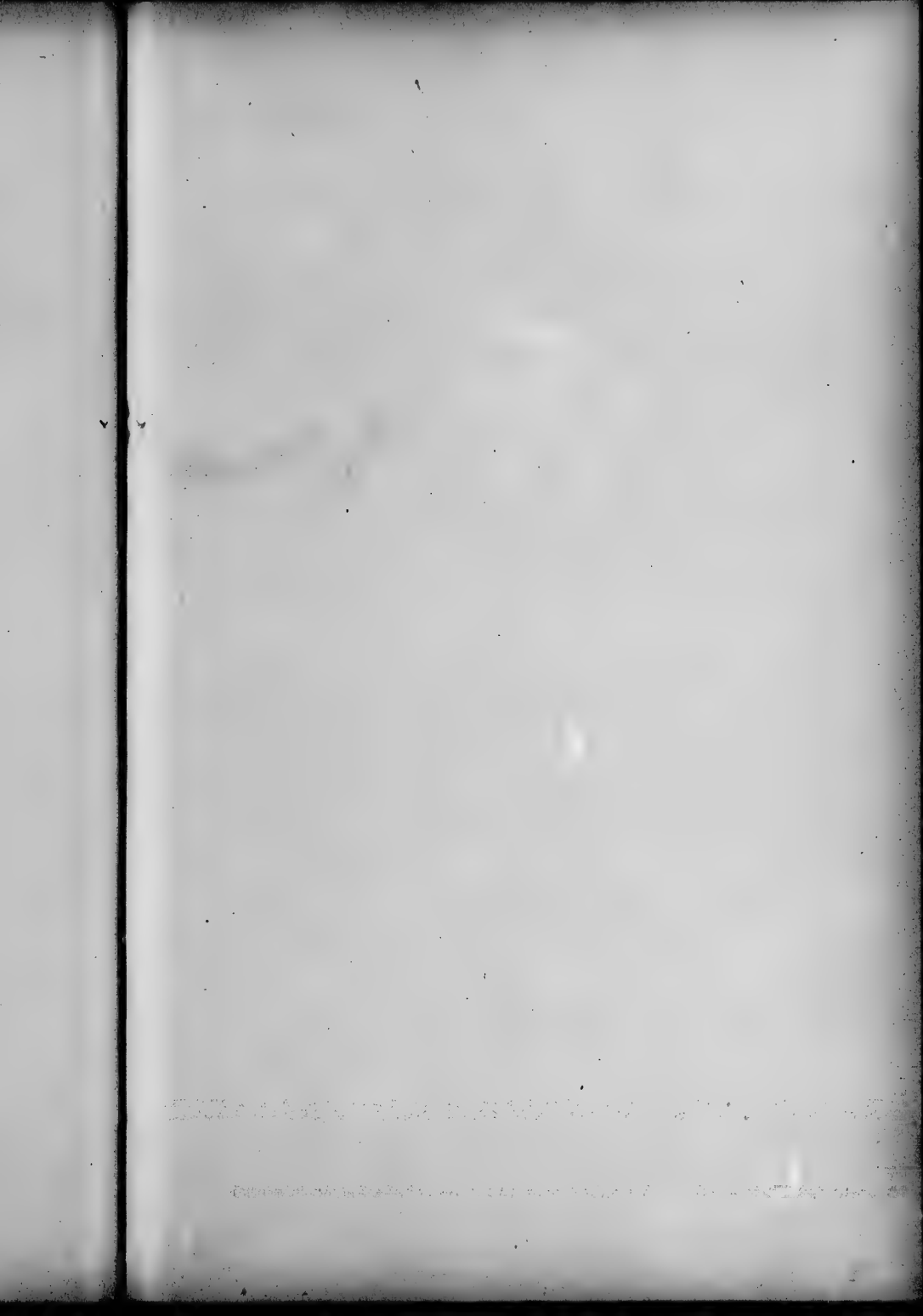
ZELIANOFF, *Chief of Chancery.*

Defer this, as I must make arrangements and prepare a Report with observations.

(No. 532.)

September 20, 1821.





No. 9.

(Received at Tselirokoff, October 2, 1822.)

The Russo-American Company, Chief Board of Management, to the Chief Administrator of the Russian-American Colonies, Captain-Lieutenant and Knight, Matvei Ivanovitch Muraviev.

(Reply to No. 36 of 1821.)

February 28, 1822.

(No. 155.)
IN your despatch of the 21st January, 1821, No. 36, you ask whether an entire cargo, without remainder (meaning fur goods) should be dispatched, as you did in that year, having sent by the "Borodino" 60,000 seals. The Board of the Company informs you that you should abstain for some time from sending only seals, as those brought by the "Borodino" are still lying unsold, a portion of them being at Moscow and in Siberia. The seals have not been sold because there was no demand for them, and in general the trade in furs is very sluggish, in view of Turco-Greek affairs; notwithstanding this, however, do not fail to send high-priced furs from Okhotsk to Cronstadt.

You also ask whether you did well to send the Japanese brass guns; in this you acted very right, as you do not require them in the Colonies, and formerly it was contemplated that they should be transported hither from Okhotsk through the Colonies.

(Signed)

MIKHAILO PRUDANOFF.
BENEDICT KRAMERS.
ANDREW SEVERIN.

(Signed)

ZELIANOFF, Chief of Chancery.

No. 10.

(Received on board the frigate "Kreiser" on September 3, 1823.)

Russo-American Company, Chief Board of Management, to the Chief Administrator of the Russian-American Colonies, Captain-Lieutenant and Knight, Matvei Ivanovitch Muraviev.

(Respecting the pretensions of the United States.)

July 31, 1822.

(No. 481. Secret.)
FROM the accompanying copies of a Ministerial communication, and a reply to the same by the Chief Board of Management of the Company, you will perceive that England and the United States are opposed to the Privileges and Marine Regulations issued in favour of the Company; against the first, in so far as they regard the determination by the Government of the 51st degree as the line of demarcation, and in respect of the second, the prohibiting of foreign vessels to navigate nearer than 100 miles from our Colonies. In regard to such pretensions, His Imperial Majesty was pleased to charge the Russian Minister in the United States to come to an agreement with those States within limits which would by mutual consent be adopted for the aversion of further dispute. In the event that you should have occasion to converse on these subjects with foreigners, you can express yourself in the spirit of the communications above mentioned. At the same time, be it known to you, in regard to the same matters, that His Imperial Majesty was pleased to order, through the Chief of the Naval Staff, that the commanding officer of the "Kreiser," now being dispatched to you, should not proceed too strictly in the interpretation of the 100 miles, consequently, should be even within a closer distance observe a foreign vessel, he is to act in regard to her as prescribed in the Naval Regulations.

(Signed)

BENEDICT KRAMER.
ANDREW SEVERIN.

(Signed)

ZELIANOFF, Chief of Chancery.

Inclosure in No. 10.

(Copy.)

(Received July 18, 1822.)

Ministry of Finance, Division 2, Desk 3, to the Chief Board of Management of the Russian-American Company.

(Respecting the supply of information in reference to measures for the protection of the pursuits of the Russian-American Company.)

(Secret.)

THE Acting Minister for Foreign Affairs has informed me that on the communication by our Government to the London and Washington Cabinets of the Rules Imperially confirmed on the 4th September, 1821, respecting the limits of navigation and order of maritime relations along the coasts of Eastern Siberia, North-Western America, and the Aleut, Kuril, and other islands, representations were made on the part of the English and North American Governments against what they term

an extension of our territories, as also against the Rules prohibiting foreign vessels to approach the above-mentioned places within a distance of 100 Italian miles.

On the report of these representations to the Emperor, His Imperial Majesty, being desirous by every measure possible, of preserving the best understanding in relations with foreign Powers, and having specially in view the avoidance of acts of violence between Russian and American vessels, apprehending that some unpleasant incidents may arise therefrom, was graciously pleased to order the adoption in maritime respects of measures which would be in accordance with this intention when dispatching this year two ships to the north-west coast of America, and at the same time to do the following:—

1. To appoint Baron Tuil von Seroskerken in the place of M. Poltiki, in the capacity of Russian Imperial Envoy Extraordinary and Minister Plenipotentiary to the North American States, and immediately to dispatch him to Washington for the purpose of coming to an agreement with that Government respecting the measures which should be adopted by general consent for the avoidance of further dispute relative to the extent of our respective territories on the north-western coast of America, for terminating all complaints which have hitherto been made by our American Company against the proceedings of some subjects of the United States, and for avoiding in this manner the necessity of strictly enforcing the Rules of the 4th September, 1821, which we shall in any other case be forced to do.

2. In order to facilitate the mission with which M. Tuil has been charged, and to secure its success, the Russo-American Company shall submit to me, as promptly as possible, an exposition of measures which we could demand from the Government of the United States of America, and which would prevent injury to the sources favourable to the trade of this Company, and preclude the native inhabitants of those places from disturbing our establishments by means of illicit trade. The operation of these measures must be such as to relieve us of any further necessity of prohibiting the navigation by foreign vessels within the distance fixed by the Rules of the 4th September, 1821, and they might be limited to a surveillance of the expanse of water subject by general usage to the jurisdiction of every Power possessing a maritime coast, and to the introduction on the coast itself of such a precautionary system as would be recognized most convenient for the defence of our possessions against every attack, and for the restriction of trade in prohibited goods.

In communicating to me this sovereign will, the Acting Minister for Foreign Affairs thinks it necessary that the exposition above referred should be accompanied by a clear indication of the places in which the Russian-American Company has hitherto enjoyed the right of hunting, and fishing and trading, and likewise of the degree which might be determined as the final limit of our possessions without giving cause for representations and demands similar to those which have now been made.

The Acting Minister for Foreign Affairs adds that when by Charter granted to the Russian-American Company in 1799 this frontier was determined under 55° of north latitude, and it was permitted to establish new Settlements even further; so long as they did not infringe on the possessions of other Powers, no Government made any remonstrances against these two points, but that it would, on the other hand, appear that two English Companies, the North-Western and Hudson's Bay, established a long time ago commercial posts* on the north-western coast of the continent of America, commencing from the 54th degree of north latitude, and even, if other information be correct, on a parallel with 56°.

For these reasons the Privy Councillor Count Nesselrode considers that it would be of utility if the Russian-American Company would communicate all the information it may possess respecting the existence of these posts and the time of their establishment, as he finds that such information is indispensable for precluding pretensions on the part of England when we shall proceed to determine with the United States the limits of our mutual possessions.

In fulfilling the above-mentioned sovereign order, and placing all these circumstances before the Chief Board of Management of the Russo-American Company, I propose that it should forward to me as soon as possible all the above-mentioned information, with the requisite details, so that clear propositions could be drawn from them for framing the instructions which will be sent to Baron Tuil for defending our limits against irregular demands and injurious attempts on the part of foreigners, and for protecting the interests of the Russian-American Company, in accordance with the intentions which served as a guide for the grant of the privileges Imperially accorded, as also for the Rules confirmed on the 4th September, 1821.

The original is signed by—

COUNT DE GURIEFF, *Minister of Finances.*
J. DRUJININ, *Director.*

Correct.

(Signed)

Chief of Chancery.

No. 11.

(Copy.)

Ministry of Finances, Department of Manufactures and Internal Trade, Section 2, Desk 2, to the Chief Board of Management of the Russian-American Company.

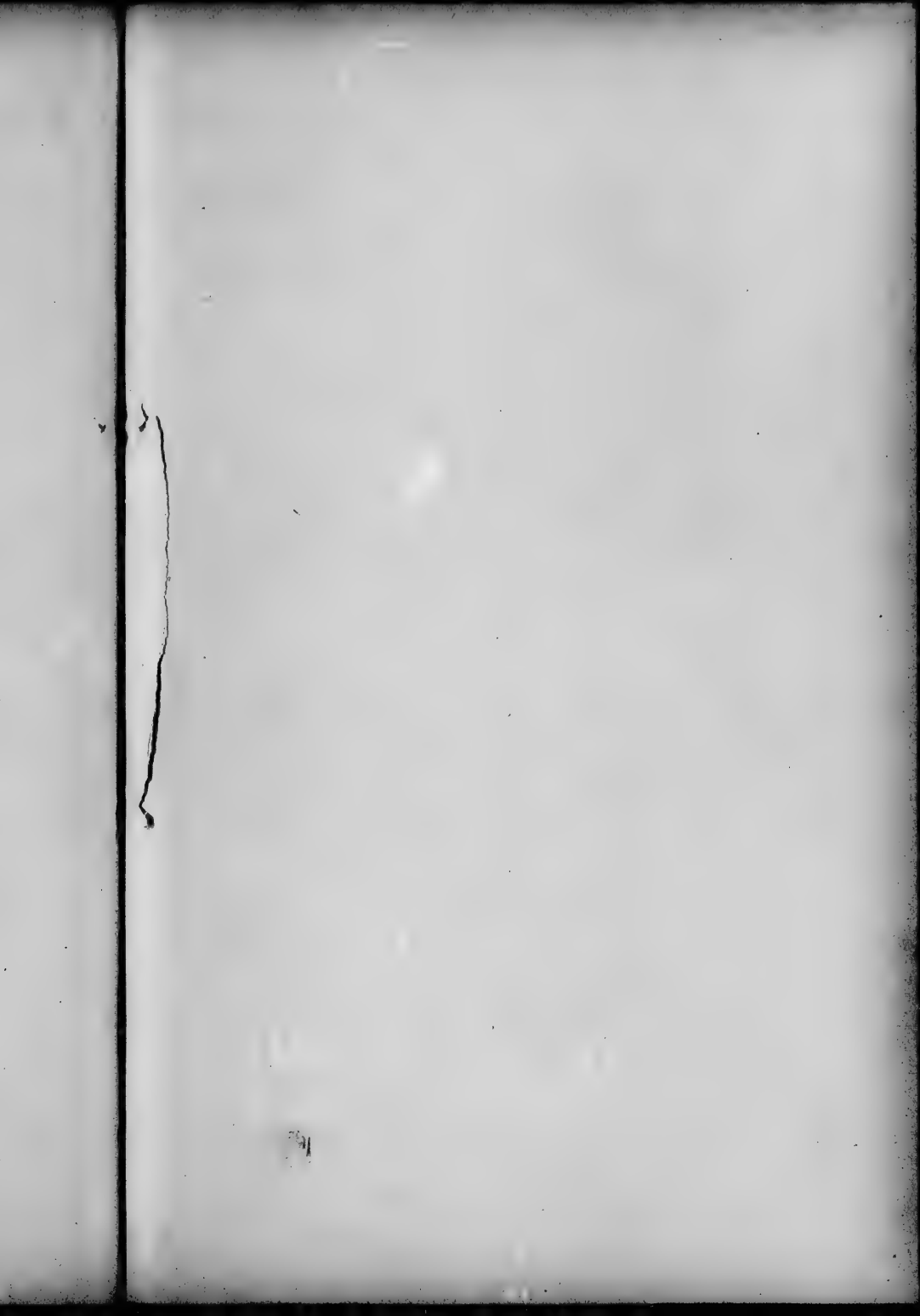
(Reply to No. 73.)

(No. 92.)

April 2, 1824.

I HAVE been in communication with the Acting Minister for Foreign Affairs on the subject of the representation of the Board of Management, dated the 11th February of the present year,

* Literally, offices.—TRANSLATOR.



No. 13.

(Copy.)

Ministry of Finances, Chancery, Section 1, Desk 5, to the Chief Board of Management of the Russian-American Company.

(Transmitting copies communicated by the Acting Minister for Foreign Affairs.)

(No. 1874.)

September 4, 1824.

I DULY communicated, in original, to the Acting Minister for Foreign Affairs, the Memorandum of the 12th June of the present year, presented to me by the Directors of the Company, and containing observations on the possible consequences that may result from the confirmation of the Convention concluded on the 5th April of this year between our Court and the North American Republic. Having now been informed by him that the Protocol of the Special Committee on this subject, which, by Imperial order, examined this matter, met with the full and entire approval of His Imperial Majesty, I consider it necessary to communicate to the chief Board of Management of the Russian-American Company, for their information, copies of the above despatch addressed by Count Nesselrode to me, and of its accompanying Protocol of the Committee of the 21st July of the present year; as also a copy of a draft despatch to me, drawn up by the illustrious Count, which was also read before the above-mentioned Committee, but remained unsigned after the final decision had been come to.

From these documents the Board of Management will observe that for the prevention of all misunderstandings in the execution of the Convention above referred to, and in accordance with the recommendations of the Committee, necessary instructions have already been sent to Baron Tuil, our Minister at Washington, to the effect that the north-west coast of America, over an extent of which, according to the terms of the Convention, subjects of the North American States may freely trade and fish, extends from 64° 40' north to Yakutat Bay (Behring's Bay).

The original is signed by—

KANKRIN, Lieutenant-General and
Minister of Finances.
J. DRUJININ, Director.

and by—

Correct.

(Signed)

RYLEYEFF, Chief of Chancery.

No. 14.

(Copy.)

Copy of the despatch of the Acting Minister of Foreign Affairs, Count Nesselrode, to the Minister of Finances, on August 18, 1824.

I THINK it my duty to inform your Excellency that the Emperor deigned to give his full and complete approval to the opinion of the majority of the members of the Committee appointed by His Majesty to investigate the observations made by the Russian-American Company regarding the Convention of the 5th (17th) April of the current year, an opinion in which your Excellency also agreed.

In consequence of this, while forwarding herewith a copy of the Protocol of the Resolutions of the Committee, I have the honour to inform you, my dear Sir, that orders in strict conformity with the conclusions contained in this Protocol have already been sent to the Ambassador, Baron Tuil.

I did not fail to annex thereto the draft despatch written by me to your Excellency, by the Emperor's command, regarding the complaints of the Russian-American Company.

I flatter myself that the inclosed document, when you communicate to the Company the decisions of the Emperor, will enable you to prove to them that the Government has never lost sight of their true interests.

Compared with the original and found correct.

(Signed)

J. DRUJININ.

Correct.

(Signed)

RYLEYEFF, Chief of the Chancery.

Inclosure in No. 14.

(Copy.)

Translation of the Protocol of the Conference of July 25.

COUNT NESSELRODE opened the Conference by our exposition of the condition of the matter intrusted by the Emperor to the examination of the assembled Committee.

He brought to the recollection of the Committee the Articles of the Agreement concluded with the Minister of the United States respecting the north-western coast of America, and the representations made against this instrument by the Russian-American Company in two Memorandums communicated by the Minister of Finances to the Minister for Foreign Affairs. He lastly communicated the draft of

a despatch which he intended to transmit to his Excellency Lieutenant-General Kankrin, which embodies the replies of the Minister for Foreign Affairs to the representations above mentioned. This draft, having been submitted to the Emperor, gained his approval; but His Imperial Majesty charged the members of the Committee to examine it once again.

After the perusal of this document (annexed to the present Protocol, together with the two Memorandums of the Russian-American Company), a discussion arose. The members directed careful attention to the causes of apprehension put forward by the said Company, as also to the reasons in favour of the Agreement concluded with the Plenipotentiary of the Cabinet of Washington; they likewise took into consideration the means considered convenient by the Imperial Ministry for the prevention of all interpretations. By a majority of votes the members of the Committee agreed to the following Resolutions:—

1. That the Agreement of the 5th (17th) April confirms rights of Russia hitherto subject to doubt; that in virtue of such Agreement these rights are recognized by a Government which might with great advantage dispute them and great facility injure them; that by it the undisputed possessions of Russia are henceforth extended beyond the limits which the Russian-American Company could, on the strength of its primitive Statutes, lay claim to and enjoy its privileges of trade.

2. That inasmuch as by this Agreement is immediately prohibited the sale of arms, warlike stores, and spirituous drinks to the natives of the north-western coast, the American Company in this manner acquires that security which it always so much prized, but which it could not hitherto obtain.

3. That this latter stipulation is all the more important, seeing that the prohibition in question, being promulgated by Russia alone, would either have drawn forth inimical proceedings and very disagreeable complications, or would not have attained its object, owing to the absence of means necessary for enforcing obedience and prohibiting trade.

4. That the Agreement of the 5th (17th) April contains in itself other no less important guarantees, namely, that the Americans will not establish settlements on the north-west coast above 54° 40'. By this stipulation all Settlements* are established on a solid foundation.

5. That it is equally not less advantageous for Russia to be guaranteed by a mutual and friendly Agreement to the effect that after the expiration of ten years the citizens of the United States will completely cease penetrating into the waters of the north-western coast to 54° 40' for fishing there and trading with the native inhabitants, as, on the one side, it cannot be supposed that the States would voluntarily have made such a concession without some compensation, and, on the other, they will fulfil, at the expiration of a certain time, all the wishes expressed to the Imperial Ministry.

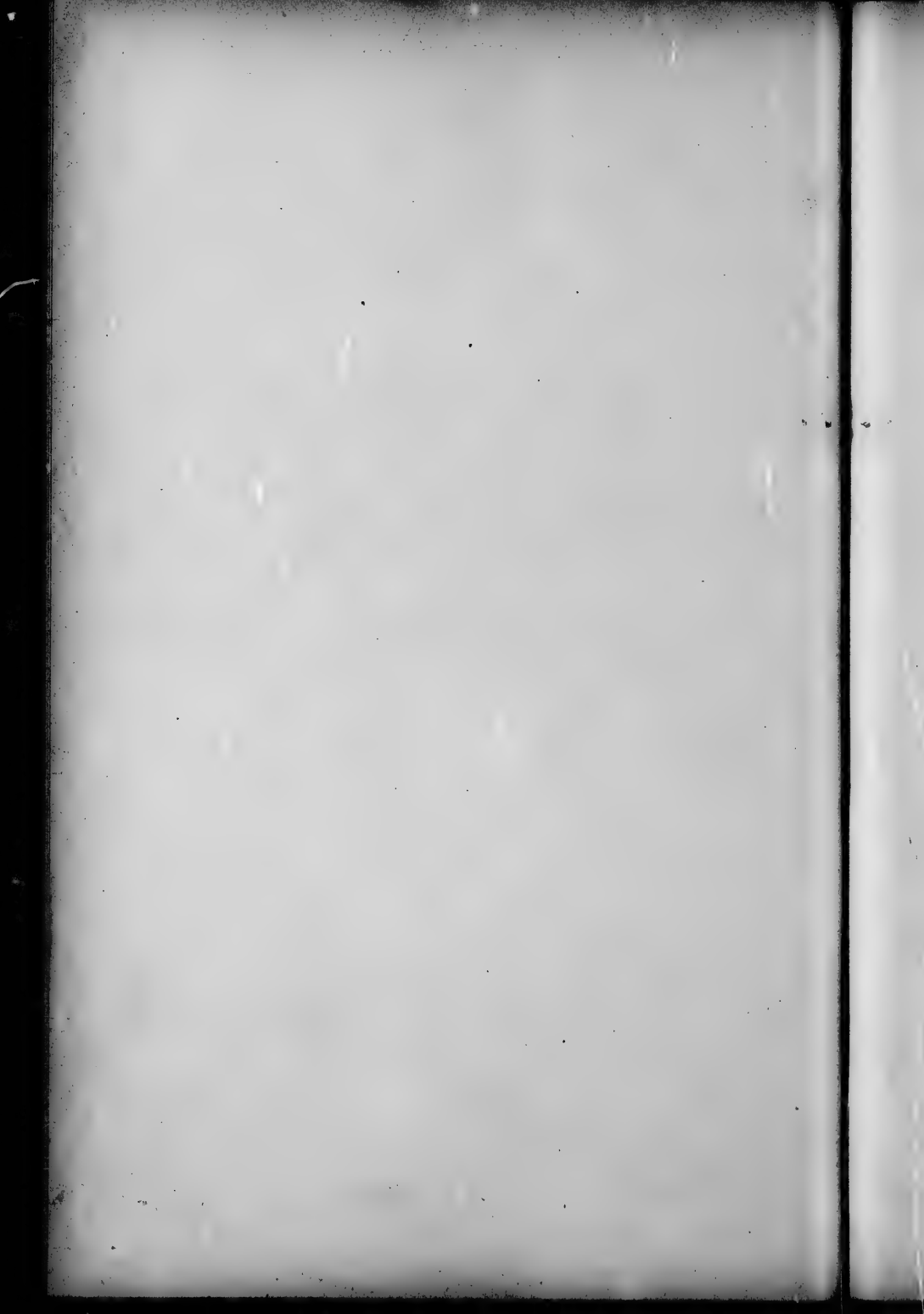
6. With regard to the influence which the Agreement concluded on the 5th April could exercise on the trade of Russia or with China, it must be observed that the capital engaged on both sides in this trade amounts to 30,000,000 dollars, and that the Russian-American Company participates in it only to the extent of 800,000 dollars, or about as much; even if it did send to Kiakta a larger quantity of furs of otters and seals, it would not be able to dispose of them, and would inflict serious injury in other articles of export by glutting with its goods a market which is already very limited by the nature of its barter trade, and, consequently, the Agreement of the 5th (17th) April cannot in any respect cause injury to the trade of Russia with China.

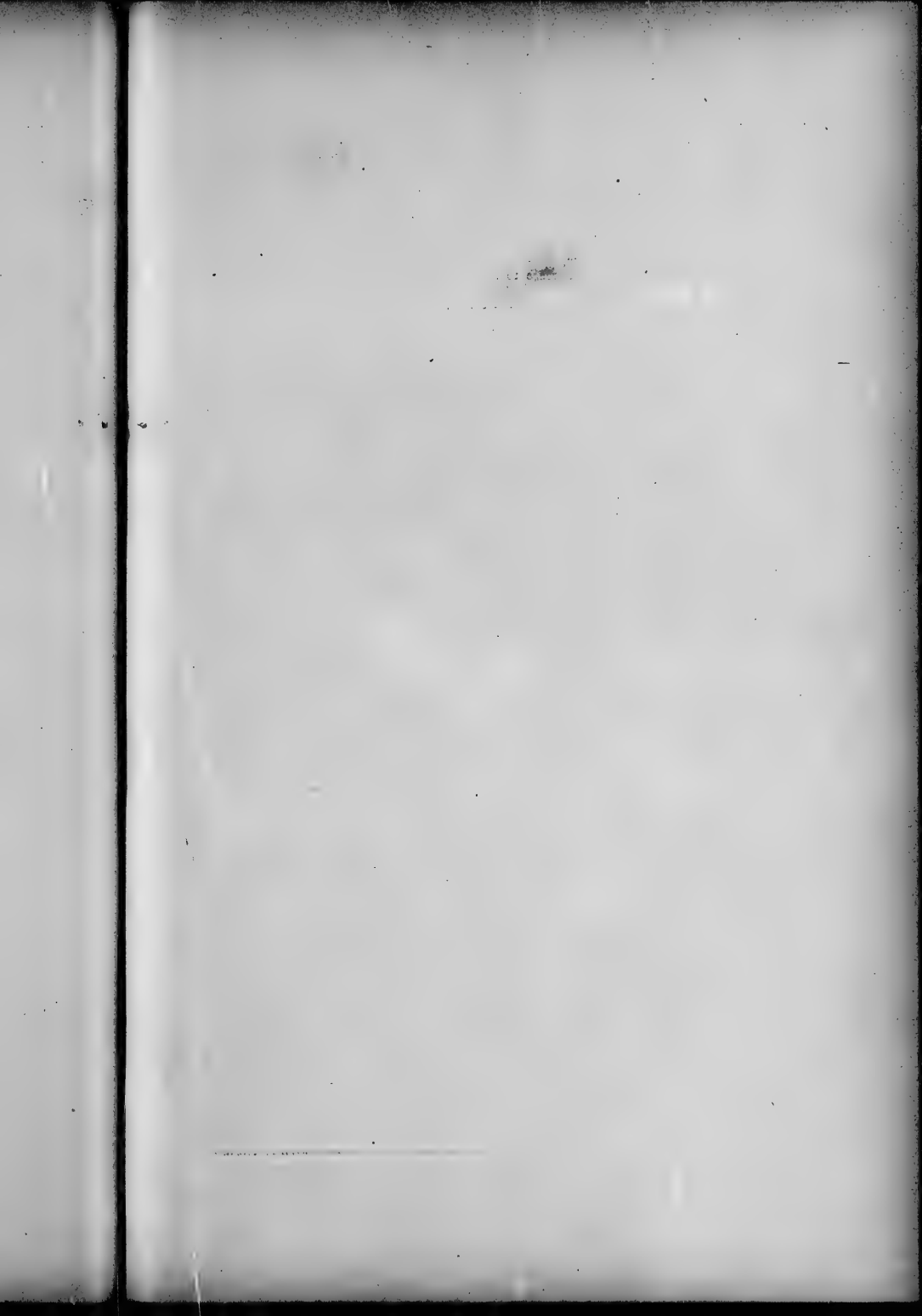
7. That as the authority of Russia over the coasts of Siberia and the Aleut Islands has long since been recognized by all the Powers, there was no need for mentioning the coasts and islands in the above-mentioned Agreement, which relates only to disputed territory on the north-west coast of America and the islands appertaining thereto; that even supposing the contrary, Russia having established fixed Settlements both on the coasts of Siberia and on the Aleut ridge of islands, American citizens could not, consequently, on the strength of Article 2 of the Agreement of the 5th (17th) April, either land at those seaboard places, or capture animals and take fish, without the permission of our Commandants or Governors; moreover, the Siberian coasts and Aleut Islands are not washed by the South Sea, of which alone mention is made in the 1st Article of the Agreement, but by the Northern Ocean and the Seas of Kamchatka and Okhotsk, which on all known land Maps and descriptions of the world do not form a portion of the South Sea.

8. It should not be lost sight of that the Agreement of the 5th (17th) April terminates all disputes which arose from the Ordinance of the 4th (16th) September, 1821, an Ordinance issued at the formal and repeated request of the Russian-American Company; that these disputes became very grave, and will of course be renewed if Russia will not ratify the Agreement, and that in that case it will be impossible to foresee either their end or results. These cogent reasons induce the majority of the members of the Committee to place on record the following conclusions: that the Agreement of the 5th (17th) April should be ratified, and in order to avoid all incorrect interpretation of the instrument that General Baron de Tuill should, in any case, be instructed to make the declaration, mention of which is made in the draft despatch read by Count Nesselrode. The Minister of Finances, and the Actual Councillor of State, Drujinin, while agreeing to the necessity of ratifying the Agreement of the 5th (17th) April, explain and hand in a separate opinion, to the effect that Baron de Tuill be directed on the exchange of ratifications of this Agreement, to demand that the right of free fishing and pursuit of animals, confirmed by Article 17 of the Agreement above referred to, should be exercised only from 54° 40' to the altitude of Cross Sound.

The majority of the members of the Committee could not fail to remark, on the one hand, that as the Russian-American Company has established many Settlements at that altitude, Article 2 of the Agreement of the 5th (17th) April affords in this respect the desired security. That even if the Company had merely appropriated the hunting and fishing in those parts, it would in such case be

* Hitherto established by the Russian-American Company under the 57°, and it is allowed successively to establish new ones under latitudes situated further to the south.





doubtful whether American citizens would incur the necessary expenditure for the navigation of such northern latitudes in which they could enjoy privileges only during ten years, expose themselves to dangerous rivalry, and, moreover, frequent those waters for hunting and fishing where they have already long ago been forestalled by the Company, and in consequence of which they would have but little hope to compensate themselves for their damages and losses.

But, on the other hand, in view of the opinions expressed by the Minister of Finances and the Actual State Councillor Drujinin that the restrictions would terminate all complaints of the American Company, the majority of members of the Committee considered it necessary to investigate the nature of these restrictions in order to convince themselves how far they could be supported without detriment to the rights and interests arising out of the Agreement of the 5th (17th) April.

As the proposed limitations have reference to two main points lying under different parallel lines, viz. :—

1. To Yakutat Bay (Behring's Bay), under parallel 59° 30'.
2. To Cross Sound Bay or Gulf, under parallel 57°.

The American Company is desirous that the subjects of the United States should not fish or hunt in these two bays. Accordingly the majority of members of the Committee are of opinion :—

In regard to the first of these points (Behring's Bay), it is situated in such a latitude in which the rights of Russia have never formed a subject of dispute, and this important circumstance allowed it to be included in the general Declaration respecting the Aleut Islands and other northern localities.

In regard to the second (Cross Sound), it is situated under 57° north latitude, and, therefore, within the limits of those islands and territories, respecting which the rights of dominion of Russia were disputed; it is consequently impossible to apply the same rule to it, nor to establish on the strength of any other sufficient proof, a claim of which it should form the object.

Notwithstanding all this, in order to exhaust all means and prove the solicitude of the Government of His Imperial Majesty for the interests of the Russian-American Company, General de Tuill might again be directed to use every effort to convince the Washington Cabinet that having accepted as beneficial the limitation relative to Cross Sound, it should prevent all disagreeable collisions between the subjects of both countries.

General de Tuill should, however, not mention this last proposal before he shall be convinced that it will be favourably received, and that it will not prevent the Government of the United States from ratifying the Agreement of the 5th (17th) April.

This opinion was unanimously received by all the members of the Committee.

St. Petersburg, July 21.

The original document was signed by—

NESSELRODE.
KANKRIN, *Lieutenant-General.*
SPERANSKI.
DRUJININ.
POLETIKA.

The original copy was duly signed—

J. DRUJININ, *Director of Chancery.*

Correct.

(Signed)

RYLEYEV, *Chief of Chancery.*

No. 15.

Russian-American Company, Chief Board of Management, to the Chief Administrator of the Russian-American Colonies, the Captain of the 1st rank of the Equipage of the Guard and Knight, Ivan Antonovitch Kupreneoff.

(In reply to despatch No. 114, respecting the sealing industry.)

(No. 63.)

March 31, 1840.

OBSERVING from your despatch of the 20th April, sub No. 114, that you were pleased to call for the opinion of the canoe-man Shayashnekoff as to when the general taking of seals on Paul Island should be commenced, so that they might be allowed to accumulate on George and the Commander Islands, the Chief Board of Management humbly requests you to keep in view Shayashnekoff's opinion, as it is founded on long experience, and adopt measures corresponding thereto, while not abandoning the principal object of placing the seal industry on a permanent footing, and protecting it against destruction.

(Signed)

F. PROKOFIEFF }
H. KUSOFF } *Directors.*
A. SEVERIN }

(Signed)

BAJENOFF, *Acting Chief of Chancery.*

(Received October 7.)

(No. 461.)

Russian-American Company, Chief Board of Management, to the Acting Chief Governor of the Russian-American Colonies, Captain of the Fleet of the 2nd rank, Alexander Ilitch Rubakov.

(Respecting the normal distribution of sailings of the colonial flotilla.)

(No. 311.)

March 20, 1853.

FROM the despatches of the Chief Board of Management of the 12th April and 16th November, 1851, *sub* Nos. 525 and 1478, and of the 2nd April, 13th May, and 23rd September, 1852, *sub* Nos. 447, 682, and 1219, your high Honour will observe that one of the gravest anxieties of the Board consists in the best possible distribution of the sailings of vessels of the colonial flotilla, inasmuch as this distribution has been latterly effected without proper consideration and real profit to the Company, in consequence of which some vessels made prolonged stays in harbours, while others received such intricate commissions that they were frequently unable to execute them completely, or else returned to Novo-Archangelsk at the latest and most dangerous time of the year.

Considering that the prospective sailings of the colonial flotilla are very uniform, and recur yearly, with only small modification, the Chief Board of Management has found it possible and useful to draw up a normal programme for the sailings of the vessels of the Colonial flotilla during the summer and winter months of the navigation season, and to transmit it to the Colonial authorities for their guidance and fulfilment, giving, however, the Chief Administrator of the Colonies the discretion of departing from this programme in those cases in which, owing to local and unforeseen circumstances, it will prove of advantage to the Company to do so.

During the navigation season of 1853 there will be in the Colonies eight sailing-vessels, and in that number of big tonnage: the "Tsesarevitch," "Nicholas I," "Kadiak," and "Shelekhoff," and of small tonnage: the "Menshikoff," "Constantine," "Okhotak" and "Tungas," and as in substitution for the "Tsesarevitch," which is to return from the Colonies in 1853, the "Sitkha," of 700 tons, now in course of construction, will be sent to Novo-Archangelsk in 1853, the number of sailings of these vessels in the Colonies will, with the establishment of regular communication round the world, will always be uniform, *i.e.*, during the summer months, from April to October, there will be eight, and from October to April, seven vessels, without counting the whaling ships, the number of which, as at present contemplated, will amount to four.

In this manner the sailings of the colonial flotilla, commencing from 1854, may be distributed in the following manner:—

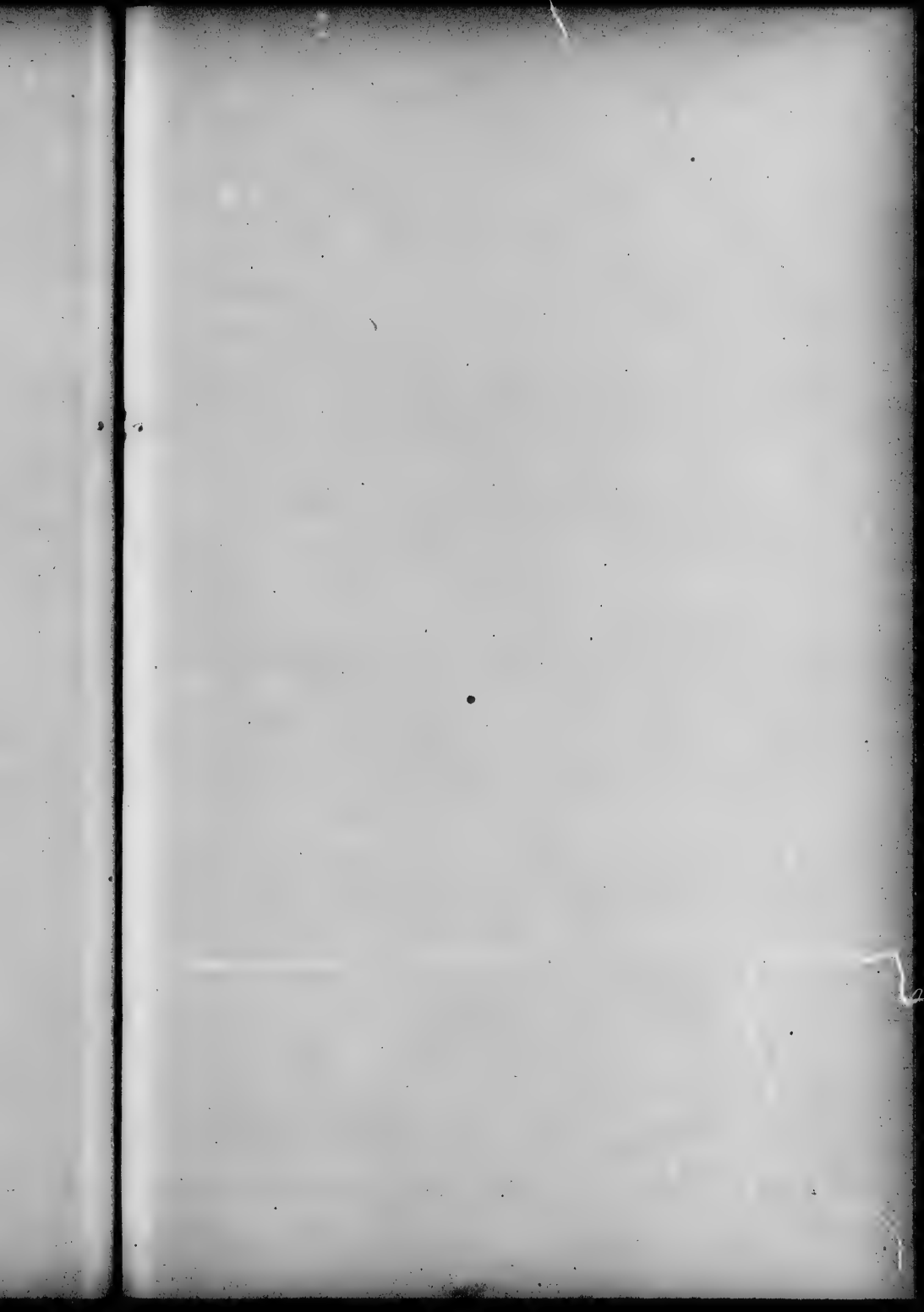
1. One vessel of small rating, for instance, the brig "Constantine," will leave Sitkha about the middle of April with stores for the islands of Atkhu or Attu, and for the Kuril Section for transporting the produce of the takings from these islands to Ayan, where the vessel should arrive not later than the middle of July.* By this same vessel can be sent and landed at Kamchatka the inspecting agents of the Company, and into which latter port the vessel, when proceeding from the Atkhu to the Kuril Section, can, without much loss of time, put in, accomplishing this in the middle of May, which is a very important time of trade at Kamchatka, and coincides with the arrival of the vessel that is circumnavigating the globe.

On reaching Ayan this vessel will remain at the disposal of the chief of that port for maintaining communication with Petrowsk, and until the construction of a cutter for Ayan for carrying goods, and for barter trade at Gijicher and other ports of the Sea of Okhotsk. At the end of August, or early in September, this vessel will proceed back with the latest despatches and goods for the Kamchatka trade; and then, calling on its way only at the Kurile Section, if it has landed an inspector there, and at the port of Petropavlovsk, it will return to Novo-Archangelsk.

2. One vessel of large tonnage, in preference to the vessel that shall have arrived round the world from Europe, will proceed with the yearly take of furs, &c., and the spring mail direct to Ayan. This vessel must be sent in the early part, and in no case later than the 15th May, in order that it may reach Ayan by the opening of the roadstead at the end of June. By this vessel must be dispatched to the port of Ayan passengers, should there be any, salt, flour, and other stores necessary for the port itself, or destined for the places under its jurisdiction. The vessel will remain at Ayan to the end of July or beginning of August, and return straight to Novo-Archangelsk with a Siberian cargo, the mail and passengers, if any. During the stay of this vessel at Ayan the Commander of the Port must be granted the power of employing it for the conveyance of men, &c., to Petrowsk, and he should receive instructions in conformity therewith.

3. A second vessel of small tonnage, and a fast sailer, as, for instance, the "Corvette Menshikoff," will proceed in the month of April, with a man-of-war's crew, under the command of a naval officer, for cruising and watching foreign whalers in the southern part of Behring Sea and along the rocky ledge of the Aleut Islands. This vessel will carry stores for Medny (*i.e.*, Copper Island) and Behring Islands, as also for Attu or Atkhu, if necessary; the movements of this vessel should be in conformity with those of the first craft of small tonnage. (*Vide* Part I of this despatch). This vessel will also, in case of necessity, transport inspectors to the above islands, and carry away products of the Company's operations to Novo-Archangelsk. This vessel must constantly cruise over the extent of water assigned to it, and may enter harbours providing supplies of wood and water only for a very short time. The cruiser

* If this rule be regularly observed, the takes from the Atkhu and Kuril Islands will be brought to Ayan in time for carriage to Yakutsk, and will not be shipped, as was latterly frequently the case, to Novo-Archangelsk for being dispatched next year to the port of Ayan, by which the goods are, without any necessity, exposed twice to the risk of sea carriage.



must visit the islands above referred to not less than twice during each year; the first time for landing supplies, the mail, and inspector, and the second for shipping the yield of furs, &c., receiving reports, and re-embarking the inspector.

The cruiser must be strictly forbidden to await in harbour the result of the inspection, as was formerly the practice; and if one and the same person is charged with the inspection of two islands, it is desirable that the cruiser be instructed to make an extra call at those islands rather than to remain idle in harbour. The cruising season of the Company terminates with the departure of the foreign whaling ships from Behring Sea, *i.e.*, at the end of August and beginning of September.

4. The third and fourth vessels of small tonnage, *i.e.*, the "Okhotak" and "Tungus," are destined for carrying stores to the redoubts and islands of the Kadiak Section and to Ungu Island, as also for carrying away the yield of furs, &c., from these places.

In order that the Kadiak Section should be perfectly guaranteed against a failure of supplies, a certain quantity of stores could be sent thither by one of the large or small vessels in the month of March.

5. The second vessel of large tonnage will be employed in supplying the islands of the Unalashka Section, Pribyloff Island, and Mikhailovsky Redoubt, and also for bartering with the natives of the coasts of Behring Sea, both on the Asiatic and American sides of the same. As vessels can be sent to those parts rather late in the season, therefore this vessel, having taken on board the supplies for Mikhailovsky Redoubt, and the goods destined for bartering with the natives, can be dispatched somewhat earlier, laden also with timber materials and fire-wood for the Pribyl Islands and for the Unalashka Section, as they may respectively be required. Provisions and despatches for the above-named places shall be delivered on the voyage out, while furs and despatches in reply will be taken charge by the vessel on her return. As this vessel, when navigating the northern portion of Behring Sea, will also act as a cruiser for watching the trading operations of foreign whalers and Englishmen with our wild natives, it must on no account be allowed to make long stays, and must be commanded by a naval officer, with a naval crew under him, if possible.

6. The third vessel of large tonnage will maintain communication with California and the Sandwich Islands, carrying thither timber goods and salt fish, returning to the Colonies with salt and other goods, if their acquisition will be necessary for, and profitable to, the Company. In no case shall this vessel remain long in foreign harbours, but after the delivery of its goods it must return to Novo-Archangelsk in ballast, if there be no return cargo ready for it. The Colonial authorities must take good care always to have a ready cargo for immediate shipment to California or to the Sandwich Islands, regulating their proceedings in this matter with the information supplied by the agent of the Company at San Francisco. By this vessel reports must each time be sent (on the most important subjects) for transmission to the Chief Board of Management.

7. The fourth vessel of large tonnage will remain in reserve, and may be employed for the conveyance of salt to Kamchatka in quantities sufficient for the use of several years; likewise for the carriage of cargoes of timber to California; for the inspection of the Colonies by the Chief Administrator, &c. In those years when it shall be found necessary to dispatch to the islands of the Atkh Section such a quantity of timber materials as could not be carried by a vessel of small tonnage, the sailings mentioned in point 3 of this despatch may be assigned to a vessel of large tonnage, and the smaller vessel appropriated for such service in the above point must be kept in reserve or receive other employment.

During the winter months, *i.e.*, from October to April, the vessels of the colonial flotilla shall and will be able to make the following cruises:—

1. One vessel of small tonnage shall remain in the Kadiak Section for keeping up communication, in winter.

2. A vessel of large tonnage shall in its turn be dispatched with passengers and available cargo round the world to Cronstadt, care being at the same time taken that this vessel does not leave Novo-Archangelsk later than the 1st October, if it proceed by way of Shanghai, and not later than the middle of November, if it be ordered to sail round Cape Town.

3. A second vessel of large tonnage shall, pending final agreement with the Hudson's Bay Company for the supply of our Colonies with flour, be dispatched to Valparaiso for flour for the Colonies, as well as for Kamchatka, if reports received from there be favourable to such shipment. If the flour from Valparaiso is destined for the Colonies, the vessel in such case should put to sea early in November, in order to be able to return to the Colonies in the course of April. If, however, the flour be for Kamchatka, the vessel may then be dispatched from the Colonies later, and from Valparaiso the vessel must sail straight to Petropavlovsk.

4. A third vessel of large tonnage shall continue to carry timber goods and salt fish to California and to the Sandwich Islands in the same manner as during the summer months.

5. A fifth vessel of large tonnage, with a cargo of the Company's yield of furs, &c. (if the same has not already been dispatched in a vessel round the world), and other goods may be sent to Shanghai and such goods left there for sale with Mr. Heard, the Company's agent. Moist sugar, wheat, barley, and other productions necessary and useful for the Colonies and Kamchatka, can be taken on the return voyage; tea for the requirements of the Colonies may also be shipped on this occasion. The sailing of the vessel for Shanghai is fixed in winter for preventing the appearance on the voyage of weevils in the wheat and other stores, as apprehended by the Colonial authorities. Communication between Shanghai and the Colonies must, in any case, be maintained, whether the Company will continue to transport tea to the place by sea or not.

6. The winter sailings of the other three ships is left to the discretion of the local authorities and the requirements of real necessity. In addition to this the Colonial authorities may during the winter months if they think proper, freight Russian whaling-vessels; but this may be done only in case that the voyage for which such vessels will be engaged cannot be performed by the Company's own ships.

In transmitting to your high Honour the above normal programme for the sea service of the colonial flotilla, the Chief Board of Management would humbly request you, should the interests of the Company require any deviation from the same, to keep chiefly in view that the vessels of large tonnage must never, so far as possible, remain idle in port, but be kept constantly and for the Company profitably employed on cruises; that the colonial waters, as far as possible, be visited in all their parts by the Company's cruisers with the object of keeping a watch over foreigners, and for this purpose, before issuing instructions to our cruisers, their movements must in this respect be combined with the projected sailings of the Company's whaling-ships, which can also perform the duties of cruisers when engaged in their present pursuits in Behring Sea; and, moreover, the vessels of the Company appointed for visiting many of the islands of the Colony should, so far as possible, be commanded by naval officers, who thus would be trained in the methods of colonial dealings, and be gradually prepared for filling the highest possible posts in the Colonial Administration.

(Signed)

B. POLITKOVSKY, *Chairman.*

B. KLIPFELD

A. ETOLIN

J. L. KUSOFF

E. VRANGEL

} *Members of the Board.*(Signed) [*], *Chief of Chancery.*

No. 17.

To the Commander of the Steamer "Alexander II" the Sub-Lieutenant Benzemann, of the Corps of Naval Pilots.

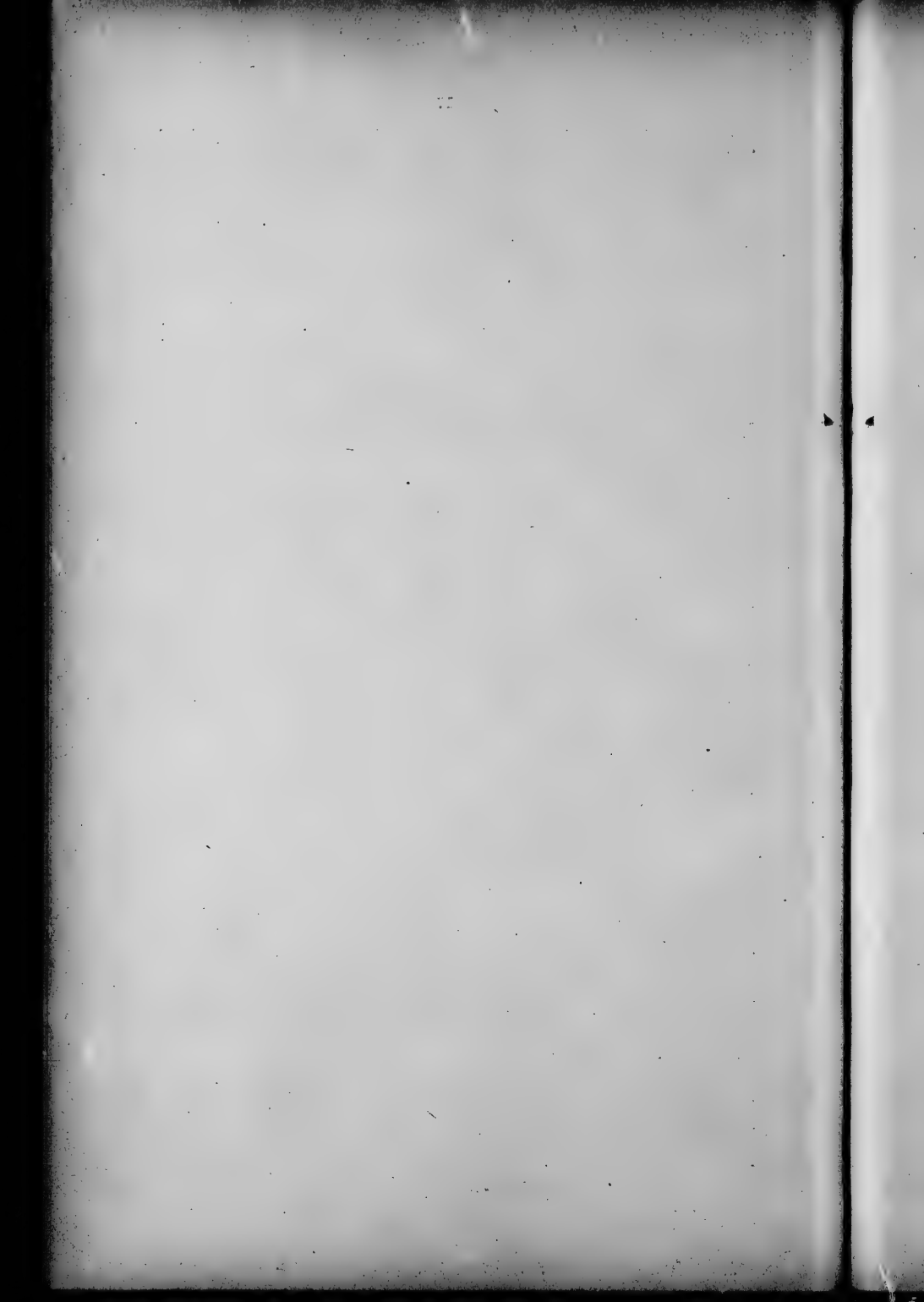
June 20, 1881.

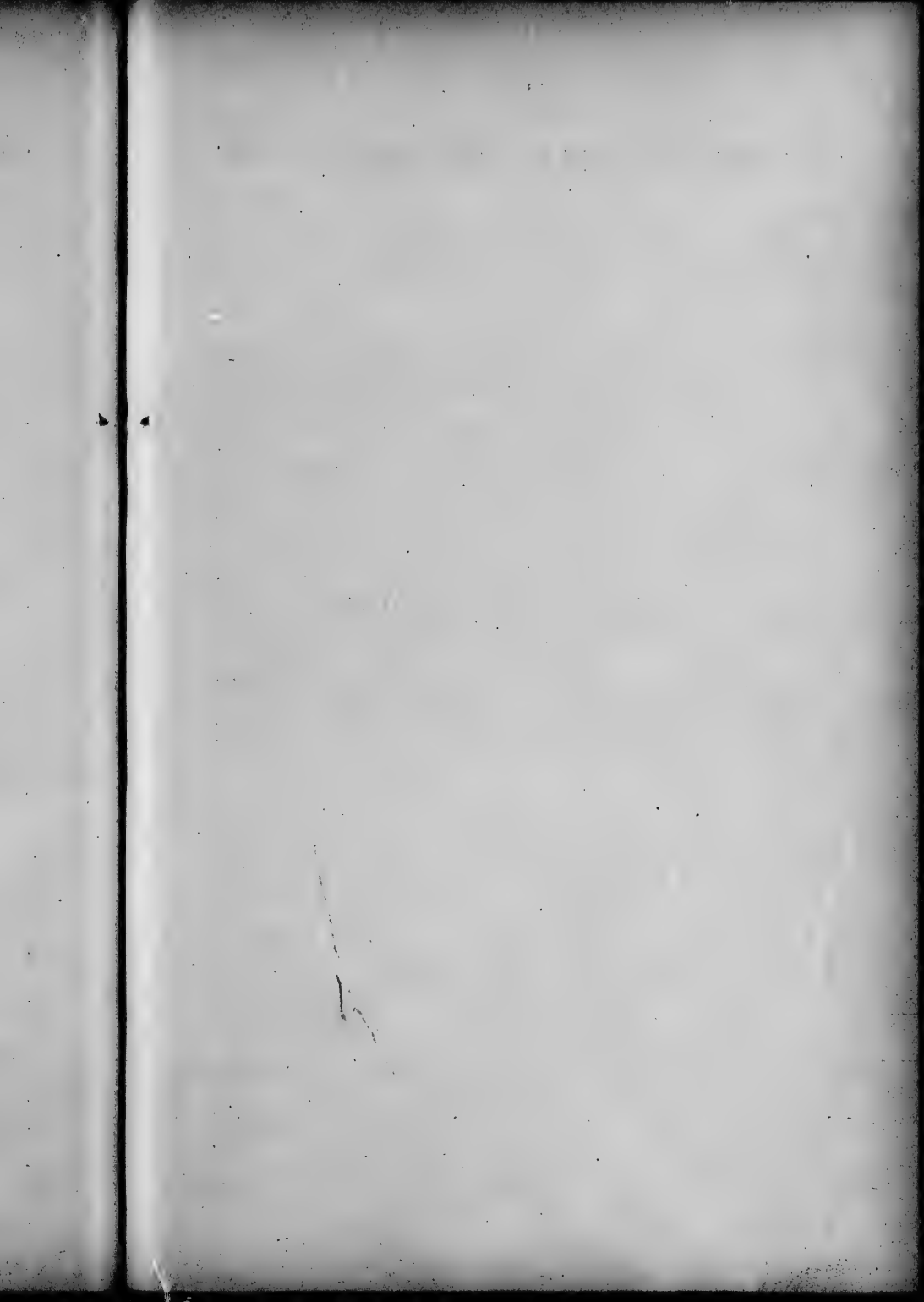
WHEN the steamer is completely ready for navigation, I propose to your Honour that you should leave this port and carry out the following instructions:—

1. Proceed to the Kenaiski coaling station; on arrival there, and delivering the accompanying packet to the Commander of the station, the Mining Engineer, M. Furujelm, load on board the steamer as much coal as the space occupied by cargo will allow.
2. From English Bay start to the island of St. Paul, where, having landed passengers, delivered the yearly stores and received the domestic stores for Mikhailovsky redoubt, proceed to this redoubt for delivering the stores forwarded by you, and receiving there the cargo which the Superintendent Vakhrameyeff will produce to you.
3. After leaving Mikhailovsky redoubt, shape your course to the Island of St. Paul, where you absolutely must load a whole cargo of seal-skins, domestic stores, fat and seals' flesh, and calling on your way at St. George's Island for taking on board the yield of skins, &c., and domestic stores, which will be in readiness by the time of the arrival of the steamer; continue your voyage to Unalaska, and, having provided the Superintendent Vlasoff, on his demand, with domestic stores, fat and seals' flesh, which you will for this purpose have received at St. Paul's, load on board all the yield of skins, &c., which you will find at Unalaska, and then proceed to Novo-Archangelsk.
4. During your visit to the above-mentioned places, receive all written complaints which may be brought to you, and, without taking any action on them, deliver them to me on your arrival at Novo-Archangelsk.
5. At Mikhailovsky redoubt, the Superintendent Vakhrameyeff will produce to you two men in the service of the Company, Kojevnikoff and Makurin, for receiving punishment for infringement of the orders of the authorities and for insubordination, and, therefore, I propose that you should inflict on them a punishment of twenty-five strokes of the rod on each of them in the presence of the whole detachment of the redoubt.
6. Bishop Peter, of Novo-Archangelsk, proceeds by the steamer for the inspection of the Missions on the north. I propose that you show his Holiness proper attention and respect, and that all his wishes be fulfilled.
7. During your stay at Mikhailovsk redoubt, load as much wood as possible and deliver it at St. Paul's Island.
8. If the Superintendent of the island shall produce to you servants of the Company, who have served their term, for leaving the Colonies, bring them on by steamer. The carpenter, Parfentieff, will proceed from the Island of St. Paul to Sitka. And—
9. I have received information that two whaling ships left San Francisco this year for trading at the Pribyloff Islands, and I therefore propose to your Honour that you should, during the course of your appointed voyage, fulfil the duties of a cruiser in strict accordance with the accompanying instructions Imperially confirmed.

I hope that you will fulfil the instructions with which you are charged to my satisfaction, and return without any great loss of time.

A list of the ship's crew and passengers is appended hereto. Rum is to be served out to the ship's crew according to existing regulations.





Copy of Communication of Department of Trade and Manufactures to the Chief Board of Management of the Russian-American Company, dated June 19, 1865, sub No. 4471.

(To No. 320.)

THE Council of State, having examined the Report submitted by me respecting the revision of the Statutes of the Russian-American Company and the organization of the Russian-American Colonies, Imperially confirmed on the 14th of the present month, established the following opinion.

When drawing up new Statutes for the Russian-American Company and the Colonial Regulations, the following chief cases should be adopted:—

1. The term of duration of the privileges, Regulations, and duties of the Company to be fixed to the 1st January, 1882.

2. The Company to be allowed to issue, as hitherto, tokens with a forced currency replacing in the Colonies metallic coins for internal transactions of trade, on condition that the Company shall bind itself to establish at several points of the Colonies a permanent exchange of such tokens for metallic currency or bank-notes; at the same time, the conditions of such conversion, as also the places where the same shall take place, must be determined in the new Statutes of the Company.

3. The Company to remain intrusted with the charge of maintaining in the Colonies the churches and clergy, schools and hospitals, provisioning all its officials and servants, the establishment in places distant from ports opened for trade of storehouses for supplying the natives with provisions and other necessary articles of consumption; with the support at its cost of the garrison at Novo-Archangelsk; the Company is also to be charged with enforcing on its chiefs of offices, superintendents, and other persons in its service in the Colonies the fulfilment of administrative duties in the region.

4. When framing new Statutes, it will be necessary to take into consideration what personal official privileges, existing under the old Statutes, need be maintained in favour of those employed by the Company, and whether it is desirable to make some difference between persons in the service of the Company at St. Petersburg and those so serving in the Colonies? at the same time the Company should be released from the discharge of the political part of the duties which at present enter within the range of its functions.

5. The Company to consist under special Imperial patronage, and short annual Reports of its operations to be submitted to His Imperial Majesty through the proper Ministry.

6. The Company to retain the right of flying on board its vessels the flag specially established; of retaining the uniform hitherto worn by those employed in its naval service, and of using a seal bearing the arms of the State; the Company also is to enjoy all its present advantages in the matter of the engagement in Russia and Siberia of all persons in its service; the term of duration of their passports and the payment of taxes on their account. When drawing up the new Statutes, the period of time shall be specified beyond which hired persons cannot be retained in the Colonies for debts owing to the Company, or in the course of which these persons shall be repatriated on the demand of Government institutions and personages. Furthermore, the Company shall not be absolved from military billets, and from the obligation of taking out annually a trade licence of the first guild, as also the established permits for all its offices, depôts, and warehouses in Russia and Siberia, except those at the port of Ayan.

7. The Statutes must define the conditions of the transfer to the Government after the Company shall have ceased to exist, of the buildings and works of public utility erected by it; which of them shall pass to the Government without remuneration, and which with pecuniary compensation; the method of determining the latter must also be defined.

8. Permission shall be granted to import by means of Russian and foreign vessels every description of goods and articles, excepting strong drinks, powder, and arms, for various pursuits, at the port of Novo-Archangelsk, at the Islands of Sitkha and St. Paul, on that of Kadiak, and afterwards at other places which will be found convenient for the same.

9. As regards the importation of strong drinks and their sale in the Colonies, and the supply of powder and arms to the natives, special Rules shall be drawn up, which, without restriction to the inhabitants, would prevent abuses with all their evil consequences.

10. The Aleuts, and in general all the dependant natives in the Colonies, are to be freed from compulsory labour on behalf of the Russian-American Company; they may settle any places considered by them as most convenient, and freely absent themselves from their places of abode, observing only the Police Regulations which the chief Colonial Administration will establish.

11. All colonial inhabitants permanently settled in the region are divided into natives and colonial residents; among the latter class are included Creols and so-called colonial citizens, as also emigrants who may come to the Colony. The natives at the same time shall be allowed to govern themselves by means of their elected "Toyons," and the colonial residents through chosen Elders. The Chief Administrator of the Colonies confirms the appointment of the "Toyons" and Elders; he also dismisses them from their posts and demands the election of new.

12. The term of compulsory service to be rendered to the Russian-American Company by Creols who have been educated at its cost in the Colonies or beyond their limits, shall be confined to five years.

13. Russian subjects, as also foreigners who have sworn allegiance to Russia, shall be permitted to settle in all parts of the colonial territory not actually occupied by the establishments of the Company or by real colonial inhabitants; these settlers are to be allotted free land for habitations, farm-buildings, and cultivation.

14. Henceforward, and until the sanction of the Government be obtained, the colonial inhabitants are not to be made to pay any direct taxes, either in favour of the Crown or of the Russian-American Company.

15. Every pursuit, except that in connection with peltry, shall be exercised freely by all the inhabitants of the Colony and by all Russian subjects without distinction and limitation. In regard to the occupation connected with peltry—

(1) The Russian-American Company shall retain to the 1st January, 1882, the exclusive right of carrying on this occupation and of trading in furs within the following limits only: on the Alaska Peninsula, reckoning its northern limit a line from Cape Douglas, in Kenai Bay, to the top of Lake Imama; on all the islands lying along the coast of this peninsula, namely, the Aleut, Commander, and Kuril Islands, also along the whole western coast of Behring Sea; on the extent to the north-east, from Alaska Peninsula, along the whole coast to the frontier continuous with the British territories; likewise on the islands situated along this coast, including Sitkha and the whole Coloshenak Archipelago; while from the mainland of the northern portion of the American continent the privilege of the Company for the exclusive enjoyment of the above pursuit and of trade is to be abolished.

(2) The colonial inhabitants and settlers of Russian allegiance, permanently established in the Colonies, are to be allowed to hunt fur-bearing animals in accordance with special Regulations to be drawn up for this purpose, and in those portions of Russian territory where the Russian-American Company will be deprived of the exclusive right to carry on the said pursuit; all other Russian subjects are to be permitted only to trade with the natives in fur goods, and must not be allowed to take part in the actual capture of fur-bearing animals.

16. The Chief Government of the region, and the control over the Colonial Administration, shall be intrusted to a Head Governor of the Colonies, appointed by Imperial authority, who will be independent of the Company and immediately subordinate to the Supreme Government; and there shall be attached to the Head Governor a Colonial Council consisting of members nominated by the Government and by the Russian-American Company, at the same time there shall be appointed the necessary number of officials for Chancery work and special Missions. The expenditure necessary for the maintenance of the Head Governor and his staff shall be defrayed by the Imperial Treasury, according to an estimate drawn up by the Naval Ministry. The duties and rights of the Governor are to be determined by special instruction or an Ordinance. And—

17. The chief direction of the affairs of the Russian-American Colonies as also of the Russian-American Company, shall be intrusted to the Ministry of Marine.

In fulfilment of the above conclusions of the Council of State, Imperially confirmed on the 14th June, I notify to the Chief Board of Management of the Russian-American Company the above main bases for the new Statutes of the Company and Colonial Regulations, and propose that the Company shall furnish me with a reply, which will be submitted to the final consideration of the Council of State. For the discussion of this matter a general meeting of the shareholders of the Russian-American Company is to be summoned, with the observance of §§ 2182 and 2184 of the first part of vol. x of the Code of Laws, edition 1857, which meeting should be attended by the largest possible number of shareholders.

The original is signed by—

REUTERN, Minister of Finance, Secretary
of State.

KHODZKO, Chief of Chancery, and acting
in the absence of the Director of the
Department.

Correct with the original.

(Signed) TIMKOVSKY, Chief of Chancery.

No. 19.

(Copy.)

(To No. 320.)

HIS Imperial Majesty deigned to confirm and order to be fulfilled the opinion established by the Plenum of the Council of State relative to the revision of the Statutes of the Russian-American Company, and respecting the organization of the Russian-American Colonies.

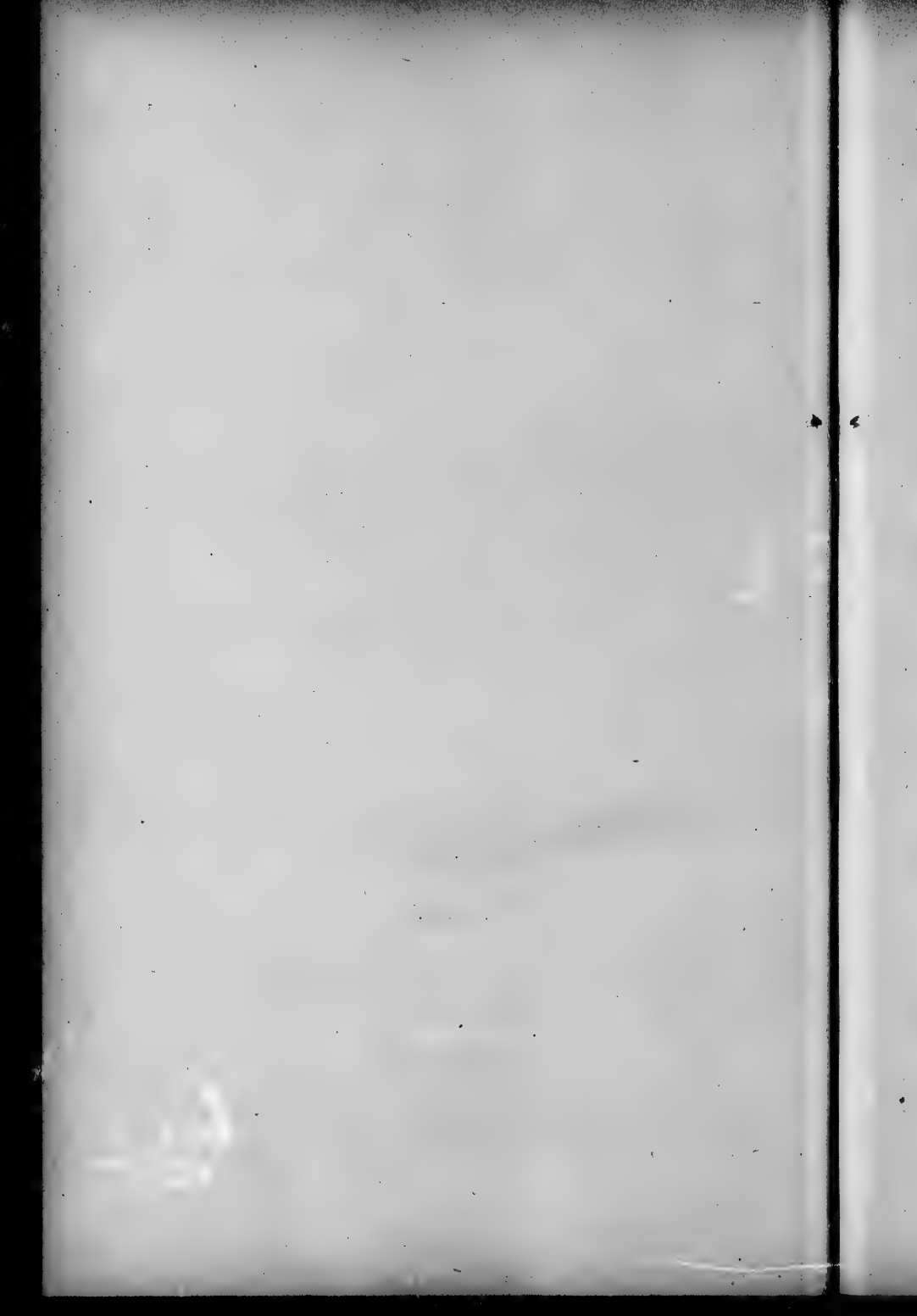
(Signed) CONSTANTINE,
President of the Council of State.

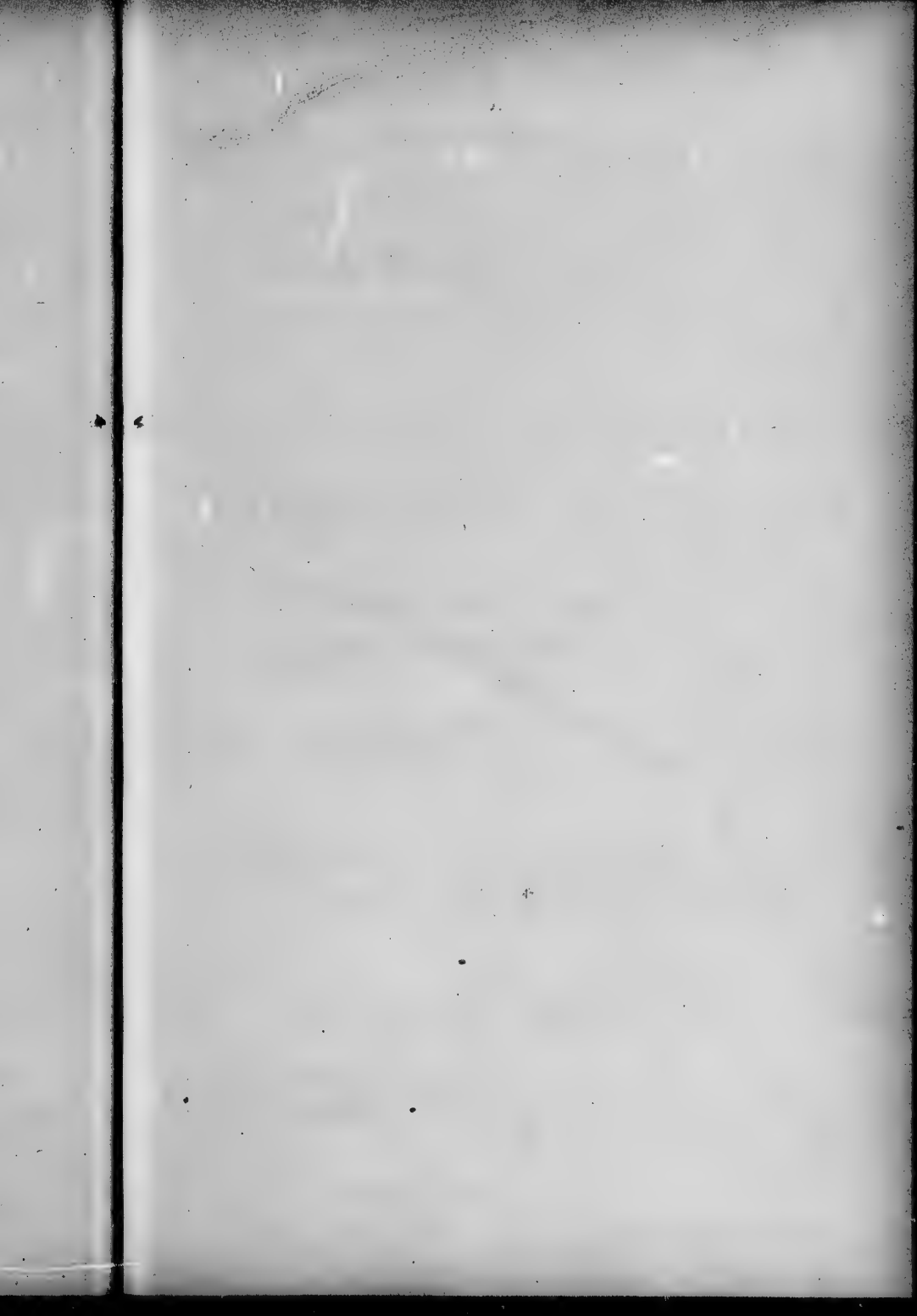
April 2, 1866.

Opinion of the Council of State.

Extract from the Journals of the State Chancery of the Council of State of January 15 and March 2, and of the Plenum of March 14, 1866, No. 186 (by the outgoing Register).

The Council of State, in the Department of State Economy, and in the Plenum, having examined the Report of the Minister of Finance concerning the revision of the Statutes of the Russian-American





Company and the organization of the Russian-American Colonies, was of opinion that, in modification and elucidation of the corresponding points set forth in the opinion Imperially confirmed on the 14th July, 1865, of the Council of State respecting the chief bases for the new Statutes of the Russian-American Company and Colonial Ordinance, it shall be determined:—

1. (under point 1) The term of duration of the rights and duties under the privileges granted for twenty years to the Russian-American Company shall be counted not from the 1st January, 1862, but from the day of confirmation of these privileges.

2. (under point 15, letter a) The exclusive right of the pursuit of fur-bearing animals and of trading in furs shall be preserved to the Company throughout the whole extent of the colonial territory; subject, as regards the pursuit of fur-bearing animals, to the operation of definite rules to be established in accord with the Minister of Imperial Domains.

3. (under point 2) The Company shall be allowed, as a provisional measure to last four years, to issue tokens in substitution in the Colonies for metallic coins, on condition, however, that the sum total of these tokens be specified in the new Statutes of the Company, and that these tokens shall not have a forced currency, but that their acceptance should depend on voluntary agreement with the purchasers, the Company at the same time binding itself to have a corresponding fund of Imperial money tokens. The immediate details and conditions on this subject shall be defined in the new Statutes of the Company.

4. (under points 8 and 9) When inserting in the new Statutes of the Company the rules respecting the opening of the ports of Novo-Archangelsk, at Sitkha and St. Paul, on Kadiak, for free commerce and the toleration of the same; as also that of hunting and other pursuits throughout the Colony; and likewise in reference to the introduction and sale of strong drinks in the Colonies, and their supply with arms and powder, the proposals of the Company on this subject shall be adopted, without maintaining, however, on any pretext, the trade monopoly which the Company has hitherto enjoyed.

5. The Company shall be allowed to increase its capital of foundation by means of the issue of bonds, to be gradually amortized in the course of twenty years, which amortization shall be effected out of the resources of the Company, without any guarantee on the part of the Government.

6. With regard to the yearly subsidy of the Government to the Company, the Minister of Finances shall in due time report on the same in the prescribed order, after preliminary communication with the Company.

7. Further arrangements in reference to the drawing up of a scheme of new Statutes for the Company and of the Colonial Regulations, shall be intrusted to the Minister of Marine, in the order indicated in the Imperially-confirmed opinion of the Council of State on the 14th June, 1865.

In conclusion, all the former bases Imperially confirmed on the 14th June, 1865, shall remain in force. The original opinion is signed in the Journals by the President and members.

Correct.

(Signed)

ERMAKOFF, *Vice-Director.*

K. RADETSKI, *Chief of Section.*

True to original.

(Signed)

A. POLITKOVSKI, *Chief of Chancery.*

No. 20.

Notice.

IT is hereby notified to those whom it may concern that if any one after reading this shall not immediately leave Russian territory, and shall not cease carrying on forbidden trade, that person, on the arrival of a Russian vessel, will be seized and sent for trial to Novo-Archangelsk, Sitkha, while his goods and vessel, if such be found, will be confiscated.

Given at the port of Novo-Archangelsk, on the north-western coast of America, this 8th (20th) September, 1864.

No. 21.

Under the patronage of His Imperial Majesty, the Russian-American Company. From the Chief Board of Management to the Chief Administrator of the Russian-American Colonies, Alexander Andreyevitch Baranoff, Collegiate Assessor and Knight.

(No. 219.)

IN reference to your observation, the Board of the Company incloses herein a copy of the Report of the Kiakhta office relative to the profitable reception of seal-skins by the Chinese at Kiakhta, and desires that you will chiefly endeavour to forward to Okhotsk for China those sorts which the Chinese mostly prefer. Do not send any sea-lions.

(Signed)

Chief of the Chancery.

April 6, 1817.

Collated.

Inclosure in No. 21.

(Copy.)

Under His Imperial Majesty's protection. The Russian-American Company to the Chief Board of Management.

Report of the Kiakhia Office.

THIS Office had the honour to receive, on the 1st February, the orders of the Chief Board of Management, dated the 14th December of the past year 1816, sub No. 715, in which the Chief Board of Management was pleased to give instructions to the effect that in exchanging seals received from the ship "Suvoroff," note should be taken of the sorts that are prized higher than others; to this the Office has the honour to report that the seals of the ships "Suvoroff" and "Constantine" have been exchanged without distinction; but it was observed from their reception and the demands of the Chinese that the 450 brought by the "Suvoroff" were bachelors and half-grown males, which were not described as Californian, and which, as compared with the grey kinds, the Chinese estimate at one and a-half. The bachelors brought by the "Constantine" are incomparably better, they being reckoned of double value, while the full- and half-grown males received by the "Constantine" are in quality still higher than the bachelors, although their hair is coarser and unfit for use, but they are of large size and their outer cuticle is very good; in colour they are of a white-yellow; the tips are plucked out and the down alone is left, which is dyed and so used; the greys brought by the "Suvoroff" are very clean in regard to inner cuticle, but the hair on them is not long, is thin, and shorter than those brought by the "Constantine," which, although not clean in skin, have a paler colour and reddish spots, but in size they are larger, and their hair is longer and thicker. Our friends are very observant as to quality, and not less as to size, sort and measure them by *vershoks*, and therefore value higher those brought by the "Constantine" than those by the "Suvoroff," both bachelors and greys. The young sea-lions received by this Office and shown by it are very good in skin, but have no down at all, and also have short hair. Our friends, therefore, do not take them at all. They obtained two lions in gift, which they intended to take to Kalgan for the purpose of trying whether they could not be put to some use.

Original signed by—

DMITRI KUZNETSOFF, Manager.
VASSILI JUKOFF, Bookkeeper.

(Signed) ZELENNIN.
(No. 137.)

February 8, 1817.

(Signed) LIBOMUDROFF, Chief of Section.

No. 22.

The Russian-American Company, Chief Board of Management, Colonial Administration, to the Chief Administrator of the Russian-American Colonies, Adolph Karlovitch Etolin, Fleet Captain of the 1st rank and Knight.

(Reply to No. 287: Capture of seals.)

(No. 273.)

March 8, 1843.

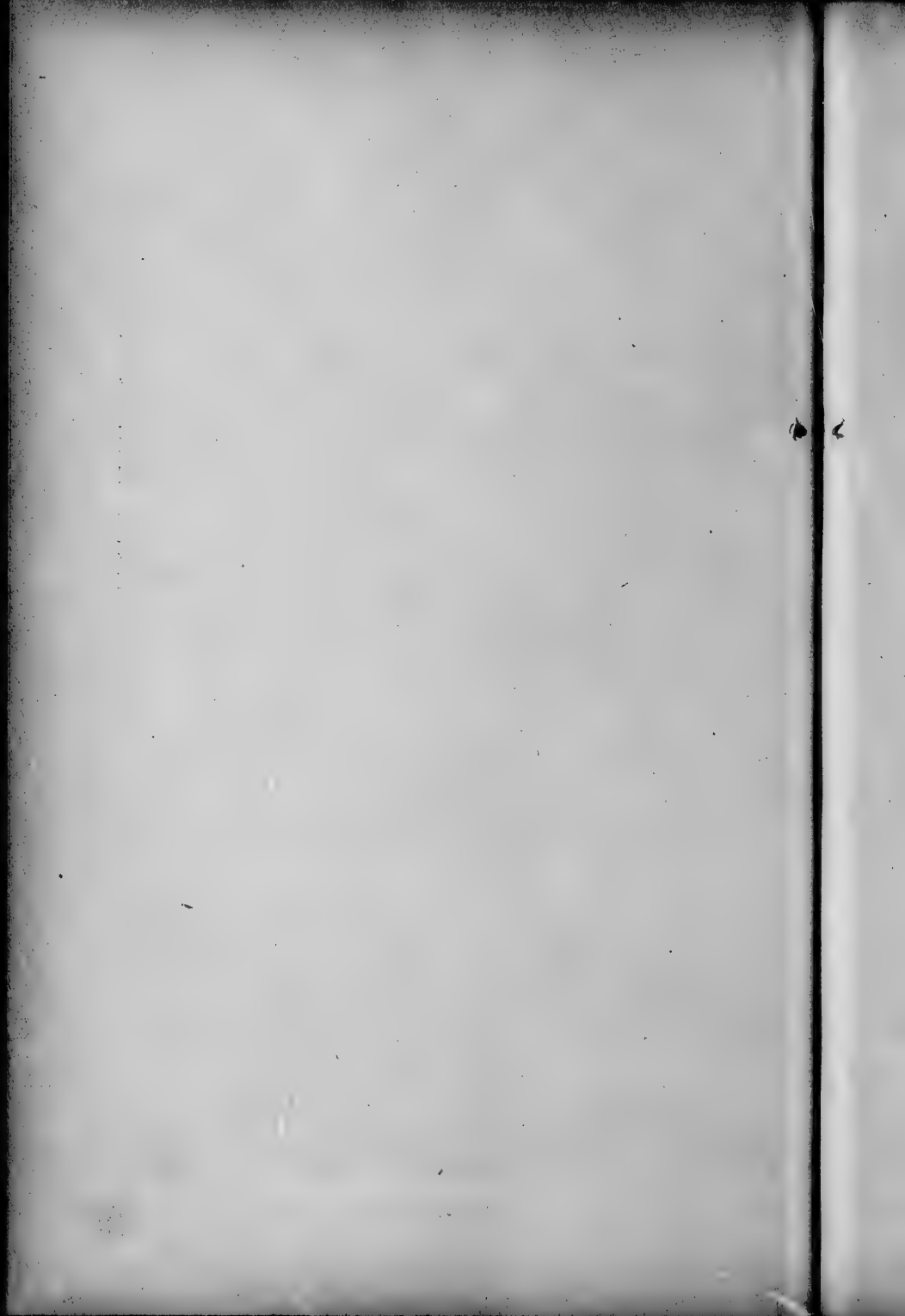
TPK arrangements specified in your despatch of the 9th May, 1842, respecting the seal industry, are fully approved by the Board, and they sanction the respite you propose to give to the Commander and George Islands. Generally, for the preservation of this valuable species, the Chief Board requests you to adopt the constant rule that the annual capture of seals should take place in such numbers as not only to preserve them in their lairs, but that they should even always multiply, i.e., that the number of annual births should be greater than that of the animals killed.

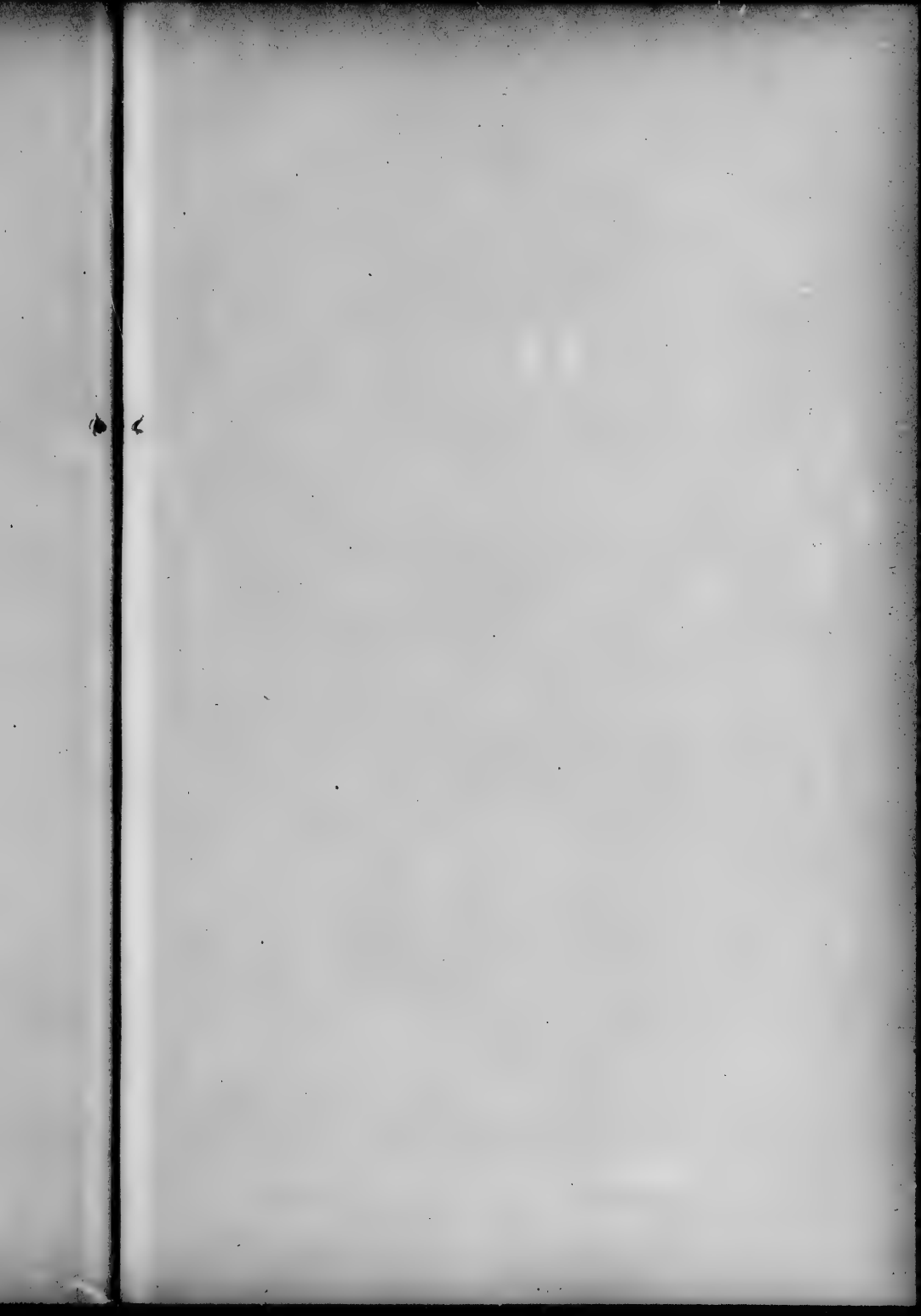
For not lowering prices at present, the last quantity of 10,000 seal-skins sent to Russia is quite sufficient.

(Signed)

VRANGEL
A. SEVERIN
J. PROKOFIEFF
H. KYSOFF } Directors.

(Signed) BARANOFF, Acting Chief of Chancery.





No. 23.

(Received October 7.)

(Acted on No. 573.)

(No. 510.)

The Russian-American Company, Chief Board of Management, to Captain, of the 2nd rank, Alexander Illich Rubakov, Acting Governor-in-chief of the Russian-American Colonies.

(Respecting the seal fishery.)

(No. 522.)

April 22, 1853.

OBSERVING from the despatches received from the predecessors of your High Honour that the seals in the Colonies are increasing considerably, and foreseeing a somewhat large sale for them, the Chief Board of Management charges you with adopting the necessary measures, until further instructions, effecting the capture of seals on all the islands frequented by them in such practicable quantities as not to exhaust the lairs. The Rules respecting the preservation of the breeding females should be observed as formerly.

Of the captured seals it is necessary to send yearly 6,000 to Kiakhta by way of Ayan, 10,000 to Shanghai, and the remainder, as many as there be, to St. Petersburg, by the vessels that proceed round the world.

The Chief Board begs you to discontinue the hitherto practiced salting of the skins, inasmuch as it does not conduce to their profitable sale.

(Signed) POLITKOVSKY, *Chairman.*
A. ETOLIN
N. KYSOFF } *Members.*
E. WRANGEL }

(Signed) A. TIMKOVSKY, *Chief of Chancery.*

No. 24.

(Incoming registry, September 12, 1854, No. 439.)

The Russian-American Company, Chief Board of Management, to Captain, of the 1st rank, and Knight, Stephen Vasilievich Voevodskii, Governor-in-chief of the Russian-American Colonies.

(Reply to No. 318: Respecting seals.)

(No. 442.)

April 24, 1854.

CAPTAIN RUDAKOFF, of the 2nd rank, in a despatch dated the 30th May, 1853, sub No. 318, while reporting to the Chief Board of Management the increase of seals on St. Paul Island, and the measures he has in consequence adopted for their capture, asks to be informed by the Board what quantity and what kinds of seals are to be killed in future.

In reply, the Chief Board of Management humbly requests your High Honour to have seals killed chiefly of the bachelor species, the older the better, seeing that purchasers more readily take large skins. Moreover, small seals are to be killed only in quantities necessary for satisfying the requirements for fat. But as at the present time the sale of seals has considerably decreased, they must be taken in such numbers as not to injure their multiplication until a greater demand for them arises, and this forms a constant subject of solicitude on the part of the Board.

(Signed) K. KLIPFELD, *Acting Chairman.*
A. ETOLIN
E. WRANGEL } *Members.*

(Signed) TIMKOVSKY, *Chief of Chancery.*

No. 25.

(Entry No. 32, March 1865.)

Russian-American Company, Chief Board of Management, to Prince Maksutoff, Captain of the 2nd rank. Acting Chief Administrator of the Colonies.

(No. 1004.)

November 8, 1864.

AT present the sale of seals extends to 43,000 skins, viz., at New York from 20,000 to 21,000, at St. Petersburg from 15,000 to 16,000, and at Irkutsk from 5,000 to 6,000 skins, which must be of a good kind, namely, full-grown males, half-grown males, and bachelors, small and medium.

To New York the whole quantity can be sent in a salted state, but the purchasers demand that, before salting, the fat be removed as carefully as possible for the better preservation and further manipulation of the skins. They must be sent thither through San Francisco, principally in complement to the cargo of vessels proceeding to New York, because under this condition the cost of their carriage will be smaller.

At St. Petersburg only dry skins are demanded, and they should be sent thither in our own vessels that proceed round the world, and in the absence of these, by way of San Francisco or Victoria, but principally by vessels already bound for London and consigned to Mr. Kelly, or to Hamburg, to Mr. Sturm, for further carriage to their destination, inasmuch as at San Francisco it is impossible to find a vessel that has a part cargo for Petersburg or Cronstadt, and to engage a vessel separately costs too dear.

At Irkutsk also only dry skins are in demand, and these must be sent thither by way of Ayan.

The Chief Board of Management, therefore, requests you to make the necessary arrangements in order that in future the sale of seals be increased; that 50,000 skins be obtained yearly in the Colony, of, as already said, good quality, and of which number 43,000 should in due time be sent to their destination, and the remainder kept in reserve at Novo-Archangelsk in case of any special demand, care being taken that these reserve skins should not spoil from long storage in the warehouses; and that they be regularly transmitted to Russia in the following year, in the place of skins last captured, which must be warehoused. Furthermore, the smaller sorts of seals should, if possible, not be taken at all, but if this cannot be avoided, permission is given you to employ them for clothing in the Colonies, strictly observing that these skins should not be disposed of to foreign vessels in a raw state; in the opinion of the Board they can be prepared without much difficulty in the Colonies, as there are always many people there in want of employment, and this might afford them means for obtaining a livelihood, especially at the outposts.

At the same time, for securing a sale of small seal-skins, the Board would request you to endeavour to introduce their use among the natives of the north, to whom they might be exchanged for fur goods, the acquisition of which is most profitable to the Company, keeping at the same time mainly in view the desirability of accustoming the natives to the use of seal-skins for their own clothing, and preventing, so far as possible, these skins from finding their way to foreign vessels.

(Signed)

B. KLIPFELD, *Acting Chairman.*
M. TENBENKOFF } *Members.*
B. ZAVOINOFF }

(Signed) A. TIMKOVSKY, *Chief of Chancery.*

No. 26.

(Incoming Register, 1857, No. 323.)

Russian-American Company, Chief Board of Management, to Stephan Vassilievitch Voevodsky, Chief Administrator of the American Colonies, Rear-Admiral, and Knight.

(No. 635.)

June 5, 1857.

IN reply to the despatch of your Excellency of the 9th March, sub No. 14, respecting the transmission of the produce of furs to New York and Shanghai, the Chief Board of Management has the honour to inform you that at present the yearly demand for seals in Russia extends to 15,000 dry skins, of which 5,000 are for conveyance to Kiakhta, while only 2,000 skins of river beaver are demanded for Kiakhta; the remaining quantity of seals, approximately about 12,000 and more, principally salted, which are better prized there, you are intrusted with dispatching to New York, consigned to Messrs. Lobach and Scheppeler, in the autumn, immediately on the arrival of the ships from the Sections, and without subjecting them to any process of curing at Novo-Archangelsk, but leaving them in the state in which they are received from the Sections, and in the same packing.

With regard to river beavers, the Chief Board of Management, although it has received information that the price of river beavers has now dropped in the New York sales to 2 r. 72 c. for each skin, and although the prices in other places are equally unprofitable, the Chief Board of Management requests that you will of necessity send the above-mentioned beavers (with the exception of 2,000 requisite for Kiakhta) to New York. The ulterior arrangements respecting these beavers will be communicated to you by the Board later.

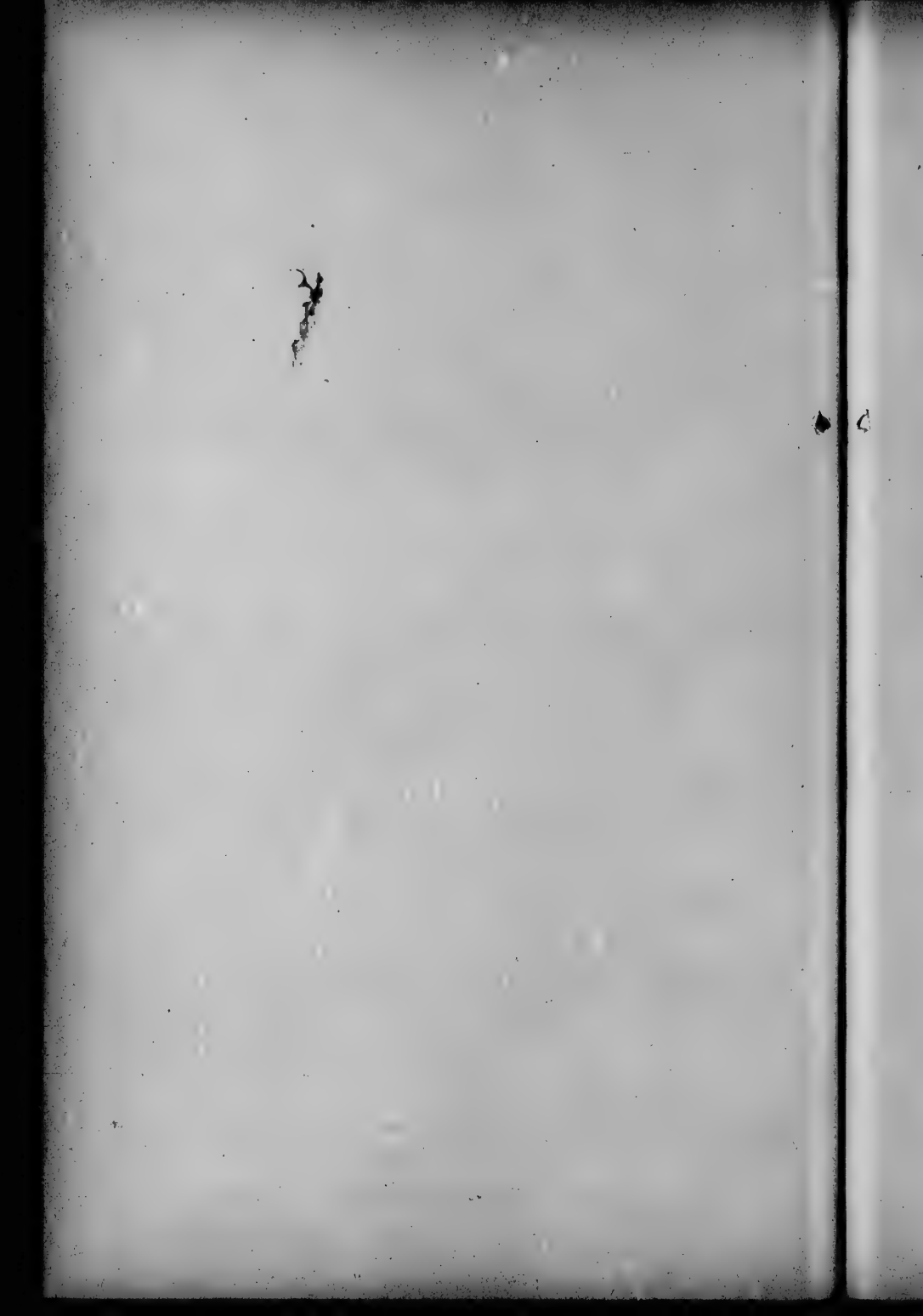
The Board would, after this, request you not to send any other furs to New York, save, perhaps, those of Arctic foxes, which realize hardly anything at Kiakhta. No furs should be sent to Shanghai without special instructions.

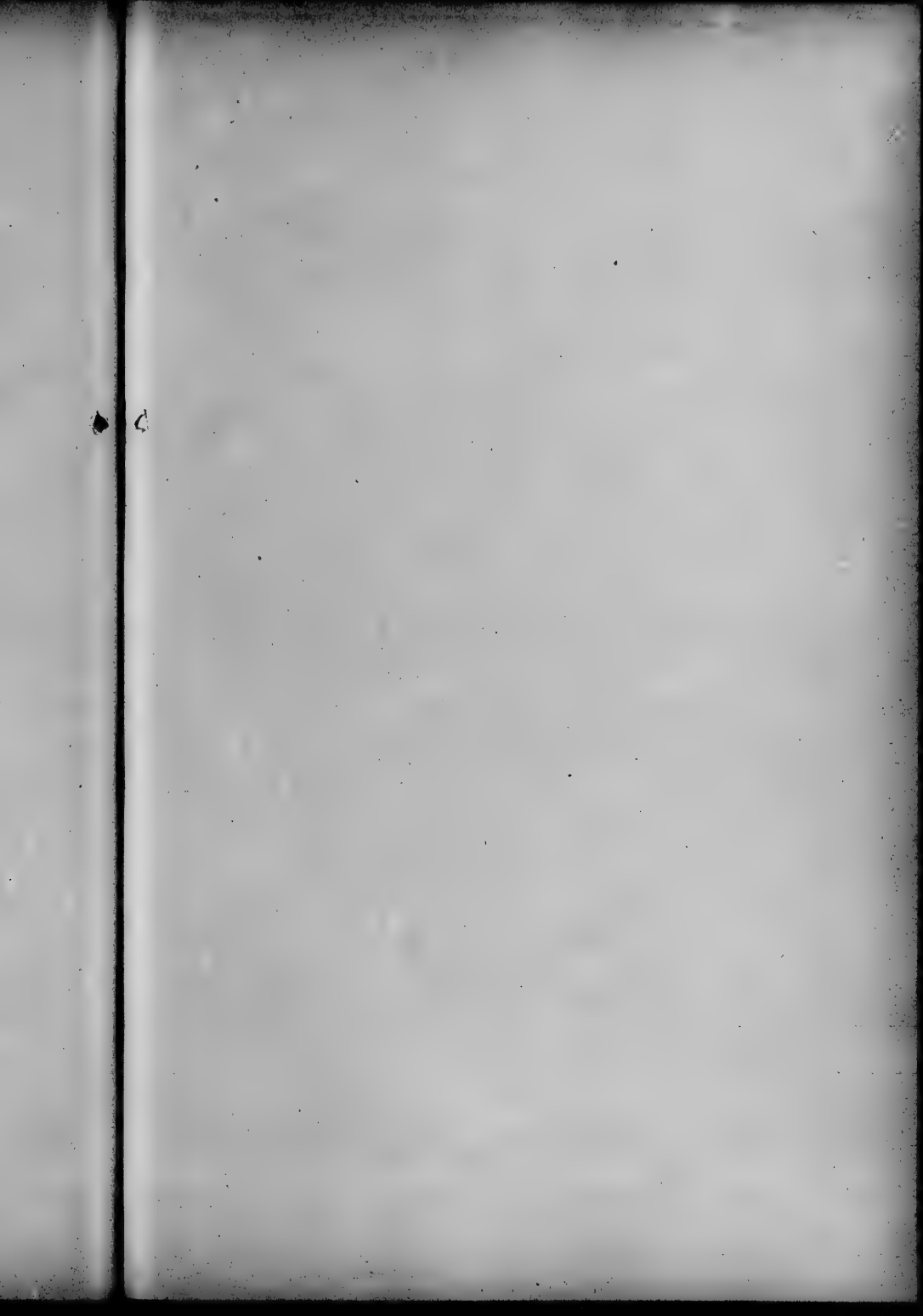
At the same time the Chief Board of Management also asks you to give strict injunctions to the canoe men to abstain, so far as possible, from killing small grey seals, and in no case to send them out of the Colonies, because they very much hinder the profitable sale of seals in Russia and in foreign markets, only big seal-skins being chiefly demanded and sold at a good price.

(Signed)

B. POLIKOVSKY, *Chairman.*
B. KLEPFELDT } *Members.*
A. ETOLIN }
E. TENBENKOFF }

(Signed) A. TIMKOVSKY, *Acting Chief of Chancery.*





To the Chief Board of Management.

(Respecting seals and river beavers.)

October 7, 1857.

IN reference to the despatches of the Chief Board of Management of the 5th and 10th June of the present year, *sub* No. 635 and to No. 650, received on the 7th September of this year, I have the honour to report that in future the instructions conveyed in those despatches concerning seals and river beavers will be duly fulfilled; at present, out of the seals on hand, 10,000 are packed and are being dispatched by the "Tsarevitch" to Cronstadt; 5,000 will be set aside for transmission through Ayan to Kiakhta, and the remainder, of which, with the exception of grey seals, there will be about 9,000 skins, will be sent to New York, together with as many river beavers as can be got together, after putting aside 2,000 skins destined for Kiakhta.

The seals do not require any dressing at Novo-Archangelsk, but it will be hardly safe to send them to New York in the same packing (as directed in the despatch of the Board) in which they are received from the Sections, i.e., only strapped in bundles of some tens of skins, seeing that they must on their voyage twice pass through the tropics and across the Equator.

According to information received by me from Messrs. Lobach and Scheppeler, of New York, they are very well satisfied with the packing in which our products were sent thither, they having arrived in due order. It would be better when sending the skins packed in the former manner to send one or two bales by way of trial packed as they are received from the Sections of the Colonies.

Messrs. Lobach and Scheppeler advise that the skins, when being packed, should not be folded, because they break at the folds, which advice will be kept in view in future when sending skins round the world.

The salting of seal-skins, discontinued by order of the Board, will be renewed next year, but as instructions on the subject will reach the islands of Paul and George only in the summer of that year, it cannot be relied on that a sufficient quantity of salted seal-skins will be received in that year. The experiment of salting seal-skins at Novo-Archangelsk will also be made.

With regard to the grey seals, I have the honour to express the opinion that hitherto they have been killed only in quantities sufficient for obtaining fat, the demand for which, irrespective of the unavoidable necessity of it for provisioning the Aleuts on the islands, and for conveyance to Mikhailovsky Redoubt for bartering against the goods of the local natives, is on the increase at Novo-Archangelsk itself, in consequence of the increase in the number of steamers and engines.

Purchase of fat cost dear; in order, therefore, to save expense, I sent instructions to the islands of Paul and George that seals' fat should be procured there, and 250 vedros of it have now been received. The cost of purchasing this quantity of fat at San Francisco would have been about 8,000 roubles Banco.

For the above-mentioned reasons—although I have made arrangements for discontinuing so far as possible the slaughter of young grey seals, which can only be utilized for melting down for fat, and as meat for winter food—I consider it, however, necessary humbly to request the Board to give me positive instructions for putting an end altogether to the slaughter of these seals; but should the Board be pleased to take the above-cited circumstances into consideration, and allow the killing of as many grey seals as will be necessary for obtaining fat and storing meat for the winter sustenance of the inhabitants of the Islands of St. Paul and George, the question of the utilization of the skins of these seals must in such case be dealt with.

At present there are about 5,000 of these skins in the warehouses, and if about 3,000 be killed annually, there will in a few years be such a considerable quantity accumulated that corresponding storage accommodation for their preservation will have to be provided.

I consider that if it be unprofitable to send grey seals for sale in Russia and foreign markets, then an attempt might be made to use them in the Colonies for double and single fur shirts, which, if the skins are well dressed, might replace sheep-skin coats.

By way of experiment, some fur shirts might be made out of the furs which are at present without use in the magazines.

In conclusion, I have the honour to report to the Chief Board of Management that, according to information now received, the seal lairs everywhere, especially on the island of St. Paul, have so increased that they are quite full, and yet insufficient, in consequence of which it is necessary to increase considerably the take, and this will be done next year.

To the Chief Board of Management.

(Respecting seals.)

January 18, 1859.

IN accordance with the instructions of the Chief Board of Management conveyed in its despatch of the 5th June, 1858, *sub* No. 697, and received on the 2nd November, there have been dispatched by the ship "Kamchatka," besides the 10,000 previously ordered, 10,664 seal-skins which had been prepared and packed previous to the receipt of the despatch No. 697 for transmission to New York, leaving 3,600 dried and 1,176 salted skins, which are now being sent by the barque "Kadiak" to San Francisco for transmission to Messrs. Lobach and Scheppeler.

With regard to the question asked by the Chief Board of Management as to what number of seals could annually be obtained in the Colonies without injury to the preservation of the species and exhaustion of the haunts, I have the honour to state that, as it would appear from the Reports of the Managers of the Pribyloff Islands where the chief haunts of the seals occur, and even on the Commander Islands, the animals have increased in all the haunts to such an extent that the places they occupy prove crowded, and from the same Reports it is also evident that about 70,000 seals could be killed at all these places, including also grey seals; but for this, it is necessary to increase the number of hunters and to provide a sufficient quantity of wood on the Pribyloff Islands for drying the skins. It can positively be said that by killing to 70,000 seals the haunts will not be impoverished for a long time.

No. 29.

To the Chief Board of Management.

(Respecting the quantity of furs exported from the Sections of the Colonies in 1859.)

May 13, 1860.

I HAVE the honour to submit herewith a Return of fur produce exported last year from the sections of the Colonies, from which the Board will observe that 392 more sea-otters were secured, as compared with 1858. Since the year 1844 there has not been such a large spoil, and this increase has taken place only in the Kodiak Section at Unalashka and Urup.

As regards the number of sea-otters taken, the Kodiak Office reports that the Gugaches living at Constantinovsky Redoubt were allowed, with the sanction of my predecessor, to hunt apart from the expedition dispatched by the office, and in places only known to them. On their arrival at Kodiak with a considerable quantity of sea-otter skins, it appeared that in the summer of 1859 they had hunted in places which had been resiped, and whither a hunting party was to have been dispatched from Kodiak in the course of the present year.

After this occurrence I do not, to my regret, expect hunting results as favourable as those obtained by Rear-Admiral Voevodski during the last year of his administration of the Colonies.

The quantity of river beavers taken was 760 more than in 1858. The yearly vacillation in the numbers of these captures depends entirely on local climatic causes, more or less favourable to the efforts of the native huntsmen. This increase, compared with the quantity secured last year, was obtained at Mikhailovsk and Kolmakoff Redoubts.

Castor oil was obtained from 470 pairs more than in 1858.

11,160 fewer seal-skins were obtained, as compared with 1858. The cause of this decrease is attributed by the Manager of St. Paul Island to the late spring, the breeding females having to make their way through ice to their haunts arrived there no longer pregnant.

I have now dispatched Lieutenant Wermann to St. Paul Island for carrying out various works and suppressing disorders which have taken place there in consequence of the relaxation of discipline among the workmen.

The number of foxes taken was 1,143 more than in 1858; the number of Arctic foxes taken was 1,174 more than in 1858; the number of lynxes taken was 178 less than in 1858; and the number of sables taken was 219 more than in 1858.

According to the Report of the Manager sea-otters are increasing at the day, *i.e.* Copper Island, and I have repeated my strict injunctions not to disturb them until the decrease of these animals at Atkha Island shall necessitate a respite there.

Only 1 pound 36 lbs. of sea-cows tusks was obtained. The Manager of Unga Island has reported to me that in Moller Bay, on the north side of Alaska peninsula, 500 pounds of sea-cows tusks were obtained in the course of 1856 and 1857, and that this quantity is there on store. On the visit paid to Moller Bay in 1858 no stock of sea-cows tusks was found, their lairs having been destroyed and everything burnt. It is not known who stole these tusks, but white biscuits, some provisions, and thirteen whale-boat oars were found, and marks of boots would show that whalers had visited the place.

All this I have the honour to report to the Chief Board of Management.

No. 30.

To the Chief Board of Management.

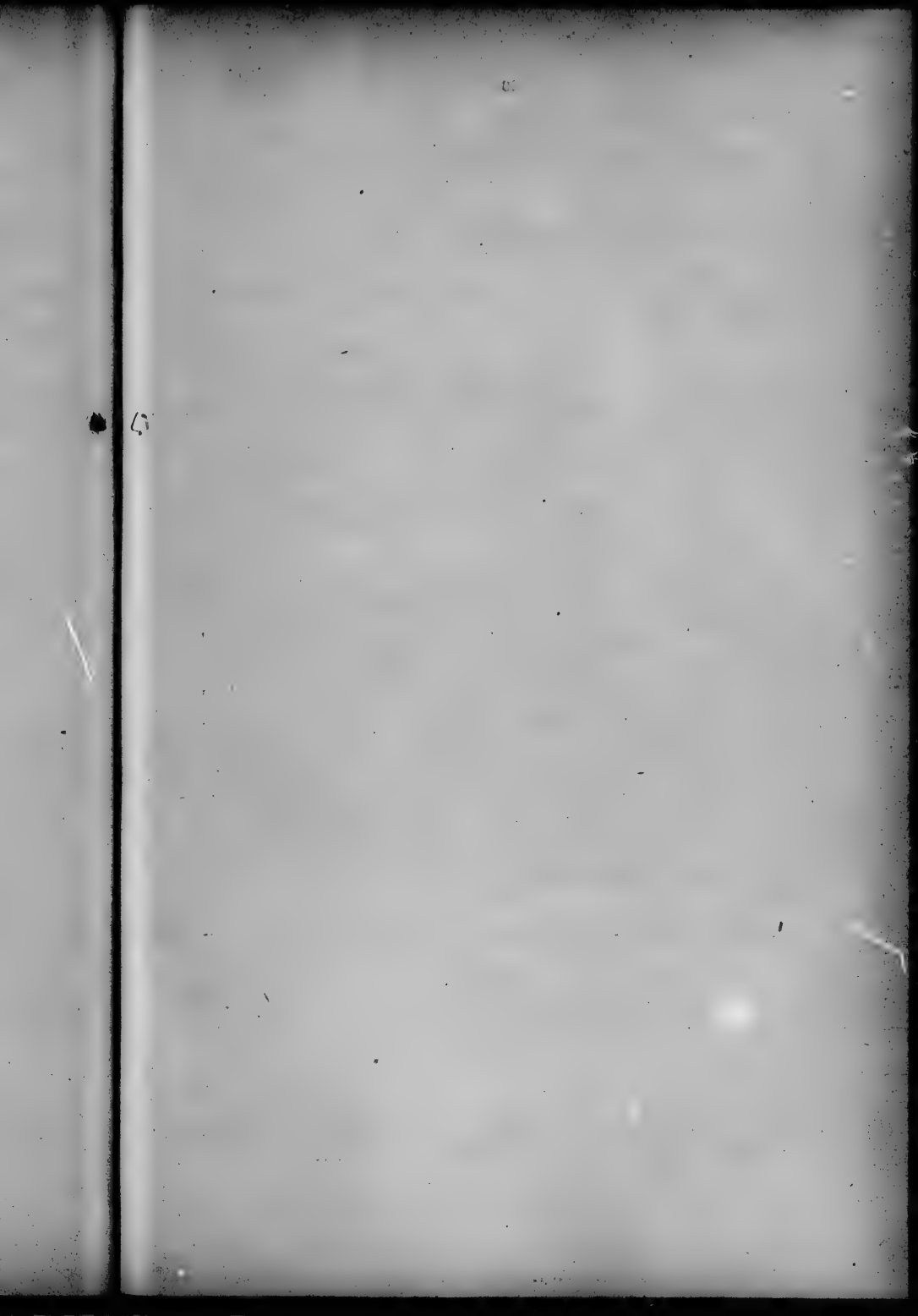
(Respecting the preparation and drying of seal-skins.)

July 16, 1863.

HAVING received the contents of the despatch of the Board, dated the 31st January of this year, sub No. 111, for unfailling observance, I have the honour to submit to the notice of the Board the following calculations respecting the cost of preparing dried and salted seal-skins:—

[888]

H



Required for dried seal-skins:—

For every 1,000 skins, 2½ fathoms of wood, which per skin represents	Rs. cop.
For binding a bale of 100 skins, 12 arshins of sea-lion skin straps, and reckoning that the medium size of a sea-lion skin, which costs 40 copecks on the spot, is 16 arshins long, the cost of the strap for each seal-skin will be	3 85
Total	0 10
Or	0 3
To this must be added payment to the Aleuts for each bachelor seal killed	0 75
Total	0 78

The stretchers are always made at Sitkha, and sent to the islands; their cost is not taken into consideration owing to its insignificance.

For a salted seal-skin we require:—

A barrel containing on an average 75 skins costs 5 roubles, and 47 lbs. of iron hoops for that amount 6 rs. 80 cop., or in all 11 rs. 80 cop., which for each skin amounts to	Rs. cop.
Using 3½ lbs. of salt to each skin for preliminary salting on the islands, and 6 pounds of salt per barrel when the skins are salted at Novo-Archangelak, each barrel containing 75 skins, and 4½ lbs. of salt for each skin, which will come to 7 pounds 9 lbs. of salt in all, costing	0 16
For binding each skin, ¼ solotniks of yarn	0 75
Repair of coopers' tools, approximately	0 24
Total	0 1
To which must be added, to Aleuts for every bachelor seal-skin	0 96
Total	0 75
Total	1 75

With regard to the labour of hunters in preparing either kind of skins, I have the honour to report to the Chief Board of Management:—

Dried seal-skins are prepared as follows:—

The skin, after separation from the flesh and removal of the fat from it, is placed on a stretcher, on which it remains until it is completely dry; then, after removal from the stretcher, it is folded lengthways in two, placed in a bale containing from 50 to 100 skins, according to their size, and, lastly, the bale itself is bound with sea-lion straps.

The salting of seal-skins, according to Mollison's plan, a description of which accompanied the Board's despatch of the 25th January, 1860, *sub* No. 31, is done in the following manner:—

After the skin has been taken off the animal it is sprinkled with salt, and placed in a tank together with others. Then when the hunters have spare time the skins are taken out of the tanks, and the inner side of each skin is covered with a thick layer of salt, on which a similar skin is placed on its inner side; the edges of these skins are then folded on one of the exterior sides, so that the salt should not drop out; they are then rolled up (the fur side outwards), and tightly bound with dry yarn. After this the rolls are tied together in bundles containing from five to ten rolls.

Heavy as the labour of the hunters is in carrying salt on their shoulders from the beach to the store-house, and then in removing the heavy skins from the magazines to the beach for loading them into the boats and delivery on board ship, it must be acknowledged that the preparation of these skins, as above described, under the prevalence of constant rains and fogs on the Pribyloff Islands, presents still greater hardships. It may be positively said that out of 25,000 dried skins yearly prepared, only one-fifth part of them are successfully dried in the air. The remainder are dried in earth-hut kilns heated by means of a wood fire, and in native habitations already confined in space and mephitic in atmosphere.

For these reasons, and in view of the difficulty of supplying the islands with food fuel in quantities sufficient for drying the seal-skins, their salting by Mollison's method presents all the greater advantage.

No. 31.

To Milovidoff, Manager of the Island of St. Paul.

May 1, 1864.

THY Reports sent last year by the steamer "Constantine" and the barque "Prince Menchikoff" have been received, and in reply to thee I instruct thee to do the following:—

To No. 29. Thou wert ordered last year to satisfy the demand of the Manager of the Unalashka Section under a special circumstance, and the Manager of St. George's Island is ordered to supply henceforward Unalashka with domestic stores; your duty consists in providing Sitkha and Mikhailovsky Redoubt with such stores.

To Nos. 30 and 31. Owing to absence of accommodation on board the brig "Sheleokoff," I was not able to allow Imica Hermann to pay a visit this year to Paul Island, and for the same reason I could not send thee a bull and cow.

To No. 32. In my order of last year, *sub* No. 49, I fixed the number of seal-skins which thou wast

to obtain yearly. This order is rescinded, *sub* No. 249, as are also all former orders relative to the capture of seals, according to the instructions of the Chief Board of Management of the Company.

I direct thee to obtain henceforward yearly up to 70,000 seal-skins, of which 25,000 are to be prepared in a dry form; the remaining 45,000 are to be salted according to the new method known to thee.

The 70,000 skins specified for preparation thou must secure only if thou shouldst not observe a diminution of seals; otherwise, report to me immediately with a view of diminishing the quantity, so as to preserve the seals for following years.

As thou hast received these instructions late, and consequently wilt not have time to prepare the whole quantity of seal-skins now demanded, please endeavour to obtain and salt not less than 10,000 skins during the time it will take the ship to proceed from Paul to Mikhailovsk Redoubt and back, and to load the skins on board on her second visit to Paul.

During last year thou sent only 14,000 dry skins, whereas 20,000 were ordered to be provided. In future, endeavour to fulfil the orders given.

To No. 34. Send a written recommendation for the remuneration of zealous servants to my successor, who will probably visit thy island this year.

To No. 36. I thank thee for thy efforts in the matter of vaccination of the inhabitants, and request thee not to let it drop in future.

To thy request that thy son should be received as full boarder of the Company into the General Colonial School, I inform thee that this school is not yet fully organized for the reception of boarders, and, therefore, I advise thee to place thy son in the house of one of thy sisters, who now receives a pension. Thy son, when living in Sitkha, can attend the school like all free pupils—not scholars of the Company.

The brig "Shelekoff" carries your yearly provisions of stores; receive them, and ship by her all thy skins and furs, and also send thy report by her. In addition to this vessel, the steamer "Constantine" will touch at thy place on her return voyage from Nushagak; she will bring thee about 2,500 pounds of salt and probably some timber.

By the same vessel I have dispatched the Russian skipper Arkhimandritoff for the inspection of the island in thy charge; I consequently order thee to fulfil all his demands.

CONFIDENTIAL.

*Protection and Preservation of other
Seal Herds.*

BEFORE dealing with these enactments, the attention of the Tribunal is directed to the inconvenience, of which the treatment of this subject affords an instance, arising from the course adopted by the United States' Government in framing its Case.

Articles VI (5) and VII of the Treaty of Arbitration raise two separate and distinct questions. The 5th question of Article VI refers to the claim of the United States to a right of protection or property in the fur-seals when outside the 3-mile limit, and the preamble of this Article requires that a distinct decision is to be given on this point.

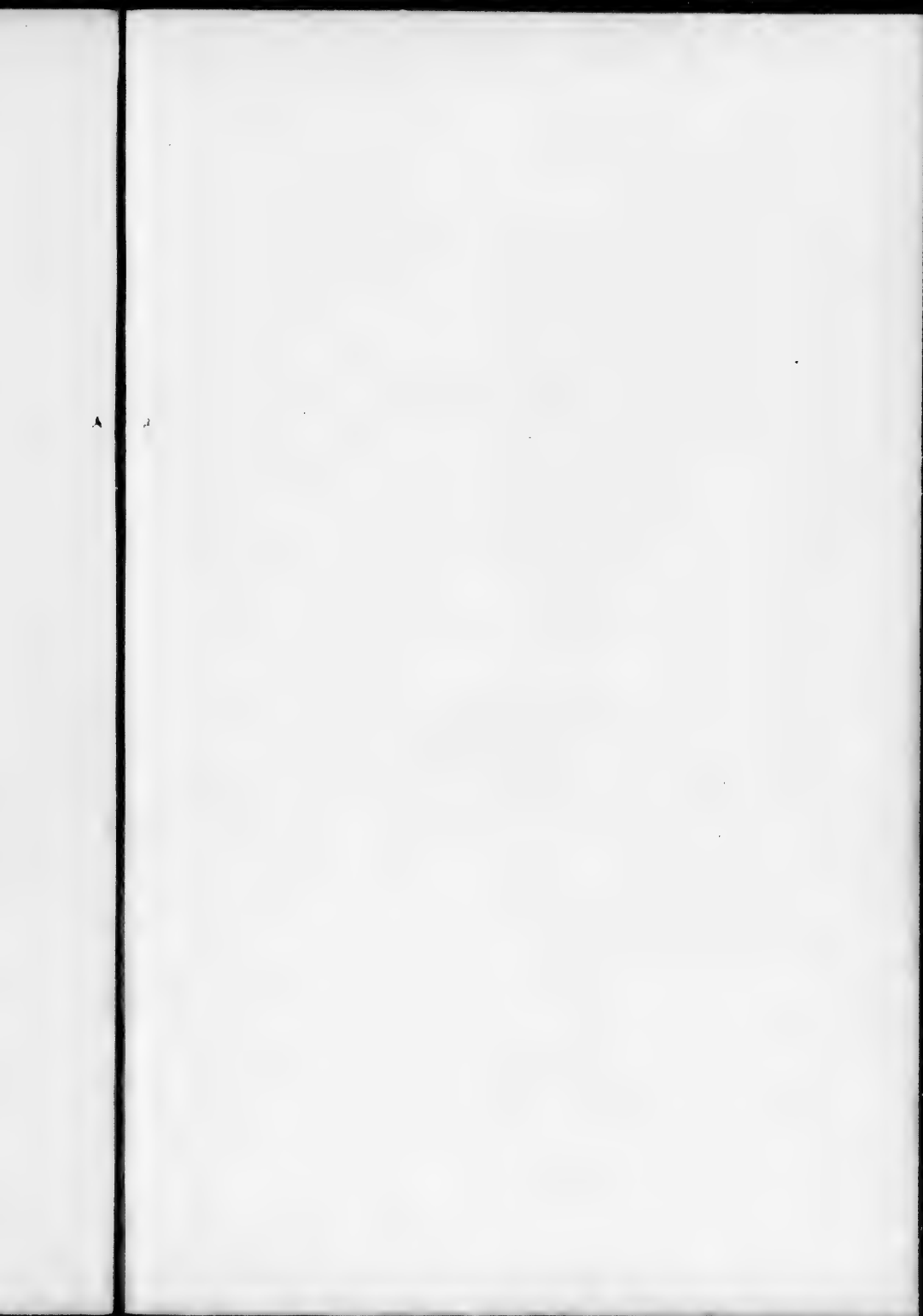
In the event of the questions of Article VI being decided adversely to the claims of the United States, it is provided by Article VII that the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary.

In the preparation of the United States' Case no attempt is made to separate the argument upon these two heads, but a mass of evidence is indiscriminately offered as bearing upon the "habits, preservation, and value of the Alaskan seal herd, and to the property of the United States therein."

United States'
Case, p. 87.

The Government of Her Britannic Majesty propose, in strict compliance with the Treaty, to deal separately with each separate question, and it protests against the additional labour imposed upon the Tribunal and upon the British Agent by the departure of the United States' Agent from the plain directions of the Treaty.

The enactments of other nations for the preservation of various animals appear to be quoted in the United States' Case for the double purpose of showing the recognition of special



rights of property in the animals, or of maritime jurisdiction, and of serving as precedents or illustrations of protective measures for the guidance of the Tribunal.

No indication is given as to the object for which any particular quotation is made.

It is therefore necessary first to treat the quotations as arguments in support of the claim of a right of protection or property in the fur-seals, and afterwards to return to the consideration of the same matters when the question of Regulations is under discussion.

It is proposed, therefore, to discuss the various enactments as arguments under Article VI (5), and to postpone to the proper time any consideration of them with reference to Article VII.

In considering the effect of the legislation of other nations, it is necessary to keep in mind the well-known Rule of international law, that the laws of a nation affect none but its own subjects, and those of other nations whose persons or property may be within its territorial jurisdiction. No nations have more consistently affirmed this Rule than Great Britain and the United States. Two distinguished American jurists may be quoted upon this point.

Mr. Sedgwick writes :—

"As a general proposition, the rule is good that no nation is bound to respect the laws of another nation, except as to persons or property within the limits of the latter. This is the general rule of our law, and this, too, is the language of the great civilians. '*Constat, igitur,*' says Rodenburg [De Stat., ch. 3, s. 1, p. 7], '*extra territorium legem dicere licere nemini, ilque si fecerit quis, impune ei non pareri, quippe ibi cessat statutorum fundamentum, robur, et jurisdictio nullum statutum.*' Says P. Voet [De Stat., s. 4, ch. 2, n. 7, p. 124. Id. 130, 138; ed. 1661], '*Sive in rem sive in personam, si de ratione juris civilis sermo instituitur sese extendit ultra statuentis territorium.*' And so says Boullenois: 'Of strict right no laws made by a Sovereign have any force or authority except within the limit of his dominion.' [1 Boullenois *Prin. Gen.*, 6, p. 4.]"

Sedgwick, "Interpretation and Application of Statutory and Court Law," New York, 1857, p. 70.

Mr. Justice Story states the same proposition as one of the—

"maxims or axioms which constitute the basis upon which all reasonings on the subject must necessarily rest, and without the express or tacit admission of which it will be found impossible to arrive at any principles to govern the conduct of nations, or to regulate the due administration of justice."

Story, "Commentaries on the Conflict of Laws," 8th edition, by Bigelow, Boston, 1883, s. 20, p. 22. Ibid., p. 21.

The writer proceeds to quote the passages from Ibid., p. 22.

Rodenburg, Voet, and Boullenois, already cited by Mr. Sedgwick.

The rule of English law is no less clear.

Maxwell on the
"Interpretation of
Statutes,"
2nd edition, London,
1883, chap. vi,
p. 168.

Sir P. B. Maxwell, in a work which is the standard authority on the interpretation of Statutes, writes :—

"Another general presumption is that the Legislature does not intend to exceed its jurisdiction.

"Primarily, the legislation of a country is territorial. The general rule is that *extra territorium jus dicenti impune non paretur; leges extra territorium non obligant*. The laws of a nation apply to all its subjects and to all things within its territories, including in this expression not only its ports and waters, which form, in England, part of the adjacent country, but its ships, whether armed or unarmed, and the ships of its subjects on the high seas or in foreign tidal waters, and foreign private ships within its ports. They apply also to all foreigners within its territories as regards criminal, police, and, indeed, all other matters except some questions of personal status or capacity, in which, by the comity of nations, the law of their own country, or the *lex loci actus* or *contractus* applies.

"It is true this does not comprise the whole of the legitimate jurisdiction of a State, for it has a right to impose its legislation on its subjects, natural or naturalized, in every part of the world; and, indeed, on such matters as personal status or capacity, it is understood always to do so; but, with that exception, in the absence of an intention clearly expressed or to be inferred either from its language, or from the object or subject-matter, or history of the enactment, the presumption is that Parliament does not design its Statutes to operate on them beyond the territorial limits of the United Kingdom. They are, therefore, to be read usually as if words to that effect had been inserted in them. . . .

Ibid., p. 173.

"Section 2.—Presumption against a Violation of
International Law,

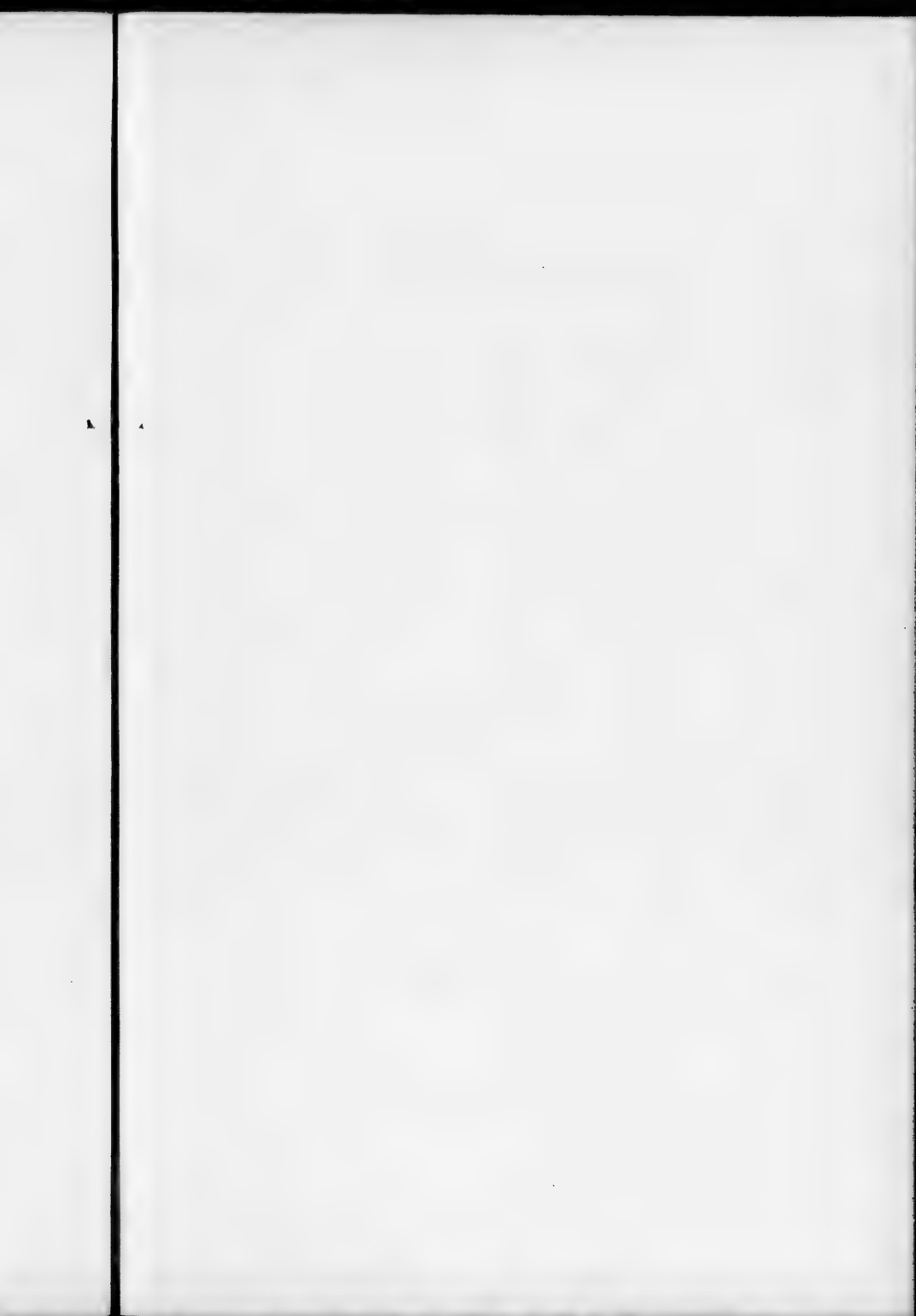
"Under the same general presumption that the Legislature does not intend to exceed its jurisdiction, every Statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations, or with the established Rules of international law. If, therefore, it designs to effectuate any such object, it must express its intention with irresistible clearness to induce a Court to believe that it entertained it; for if any other construction is possible it would be adopted, in order to avoid imputing such an intention to the Legislature. All general terms must be narrowed in construction to avoid it. . . .

Ibid., p. 174.

See 34 Viet., cap. 8.

"So it is an admitted principle of public law that, except as regards pirates *jure gentium*, and, perhaps, nomadic races and savages who have no political organization, a nation has no jurisdiction over offences committed by a foreigner





out of its territory, including its ships and waters as already mentioned; and the general language of any criminal Statute would be so restrained in construction as not to violate this principle So it has been repeatedly decided in America that an Act of Congress which enacted that any person committing robbery in 'any vessel on the high seas' should be guilty of piracy applied only to robbery in American vessels, and not to robbery in foreign vessels even by an American citizen. It was held that a foreigner, while navigating a foreign ship on a voyage to a foreign port, was not triable by the Courts of this country for a manslaughter committed on the voyage within 3 miles of the English coast, and in a British ship. [Regina v. Keyn, 2 Ex. D. 63. So held by seven Judges against six.] An Act of Parliament which authorized the Commanders of our ships of war to seize and prosecute 'all ships and vessels' engaged in the Slave Trade was construed as not intended to affect any right or interest of foreigners contrary to the law of nations [Le Lain, 2 Dods, 214]. Though speaking in just terms of indignation of the horrible traffic in human beings, it spoke only in the name of the British nation. Its prohibition of the trade as contrary to the principles of justice, humanity, and sound policy, applied only to British subjects; it did not render it unlawful as regarded foreigners." [Per Best J., 3 B & A. 358.]

Maxwell on the
"Interpretation of
Statutes,"
2nd edition, London,
1883, chap. vi,
p. 175.

Ibid., p. 176.

Great Britain's
Case, p. 153.

To the above quotation may be added the following extracts from Judgments given by English Judges.

In his Judgment in the case of the "Zollverein," Dr. Lushington said:—

The "Zollverein,"
Swabey's Reports,
p. 97.

"In looking to an Act of Parliament, and in considering whether it applies to foreigners or not, we are always to bear in mind the power of the British Legislature; for it is never to be presumed unless the words are so clear that there can by no possibility be a mistake that the British Legislature exceeded that power, which, according to the law of the whole world, properly belongs to it. The power of this country is to legislate for its own subjects all over the world, and as to foreigners within its jurisdiction, but no further."

In the case of the "Johannes" the same learned Judge held that the words "salvage in the United Kingdom," which occur in "The Merchant Shipping Act, 1854," did not extend to services rendered beyond three miles from the shore.

The "Johannes,"
30, Law Journal,
P. M. and A., p. 91.

In delivering Judgment in the Court of Appeal in the case of *Cope v. Doherty*, Lord Justice Turner remarked:—

"Cope v. Doherty,"
27, Law Journal,
Chancery, p. 600.

"This" ("The Merchant Shipping Act, 1854") "is a British Act of Parliament, and it is not, I think, to be presumed that the British Parliament could intend to legislate as to the rights and liabilities of foreigners."

Falkland Islands.

United States' Case, p. 221.

Ibid., Appendix II, p. 393.

British Report, p. 193.

Report of British Commissioners, p. 156.

It is here proposed to consider the effect and operation of the various enactments quoted in the United States' Case in the light of the legal principles asserted above.

The first quotation is from the Decree of the Falkland Islands Government in 1881.

Captain Budington, a navigator and seal hunter, is quoted as an authority for the statement "under oath" that this Ordinance is enforced outside the 3-mile limit.

Captain Budington, however, only swears as to what was his understanding of the Decree, and as to the enforcement of this law against foreigners outside the ordinary limit of jurisdiction he offers no evidence.

The Ordinance enacts (sect. 1) as follows:—

"No person shall kill or capture, or attempt to kill or capture, any seal *within the limits of this Colony and its dependencies* in the close season."

The evidence collected at p. 156 of the British Commissioners' Report shows that sealing at the Falkland Islands is almost entirely carried on upon land:—

"It has not been the practice to shoot the seals in the water.

"Pursuit in the high seas is not carried on to any extent.

"There is no regular migration."

New Zealand.

United States' Case, p. 222.

Ibid., Appendix I, p. 436.

One Imperial and three Colonial Statutes of New Zealand are quoted in the United States' Case. The extent of jurisdiction exercised by this legislation is defined by "The British Act of 1863."

By section 2 of this Act the Colony of New Zealand is defined as comprising—

"all territories, islands, and countries lying between the 162nd degree of east longitude and the 173rd degree of west longitude, and between the 33rd and 53rd parallels of south latitude."

In the United States' Case, however, this Act is described as defining the—

United States' Case, p. 223.

"Boundaries as coincident with parallels 33° and 53° south latitude and 162° east and 173° west longitude"—

and the subsequent legislation of the Colony is then discussed upon the assumption that this very free paraphrase is the actual language of the British Legislature.



6"

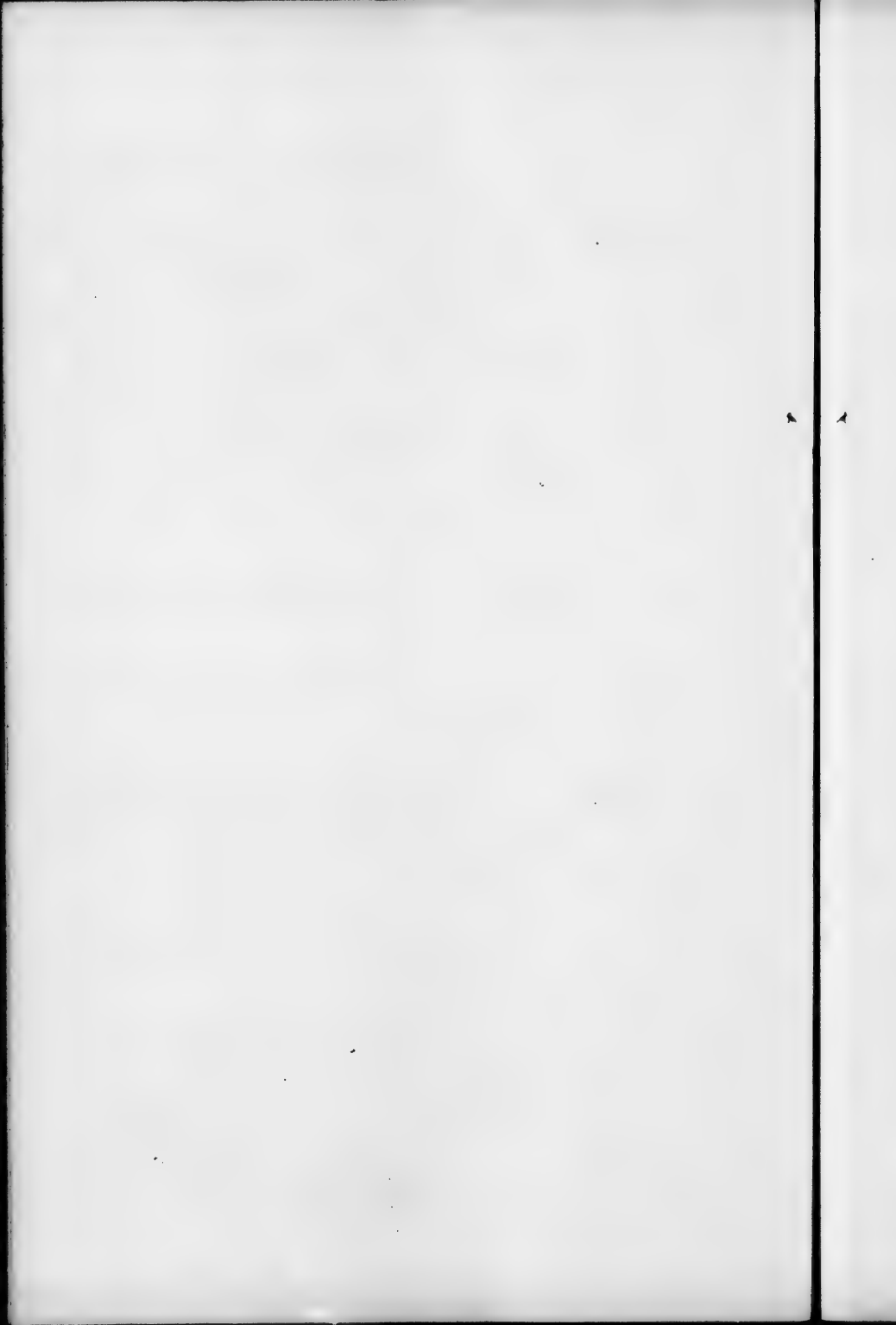


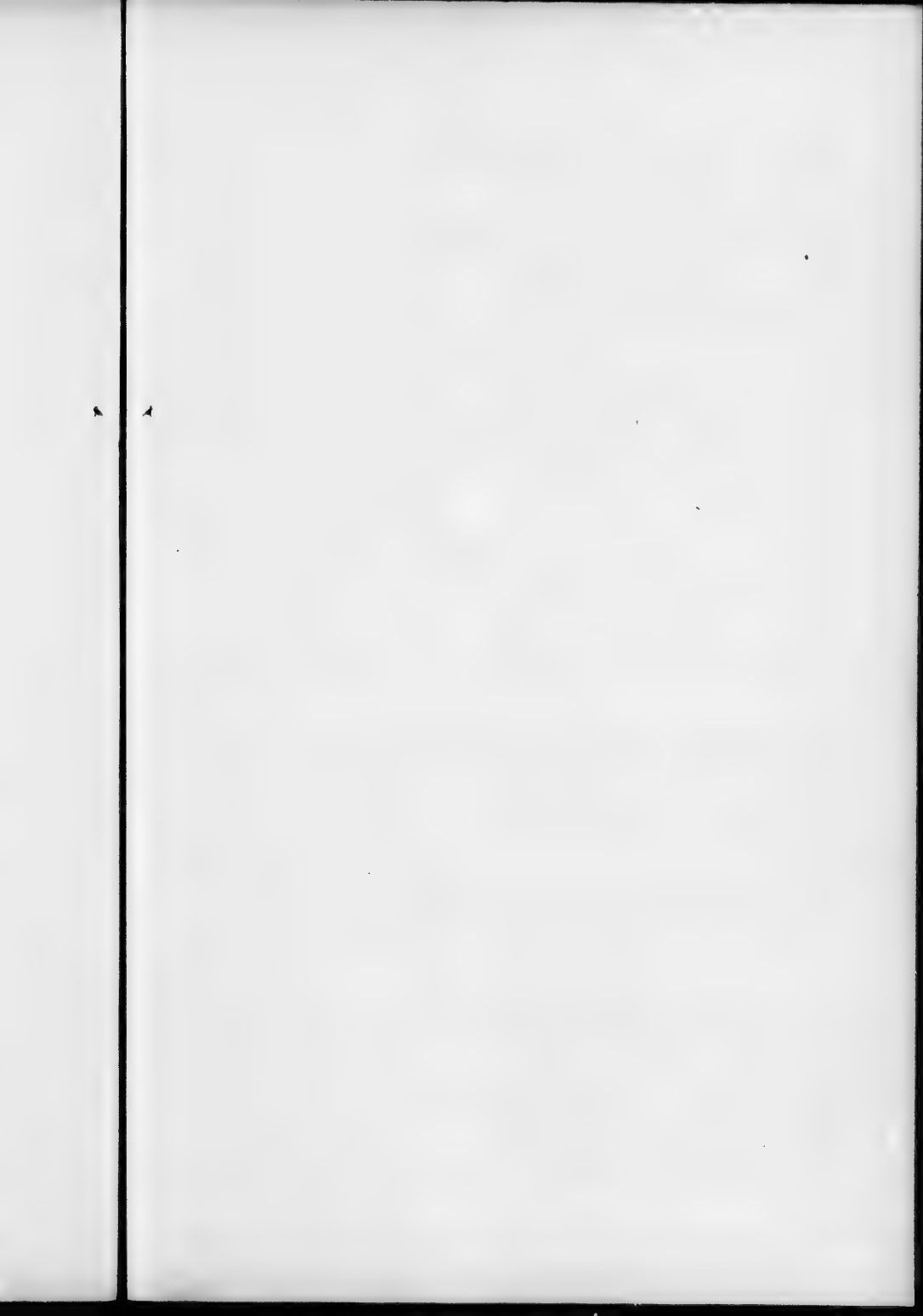
Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

18 20 22 25
E E E E E
E E E E E

10 11
E E E E E
E E E E E





The Act is printed in full in the United States' Appendix, and it will be seen that this misinterpretation of its meaning is the only foundation for the whole argument which is based on New Zealand legislation.

United States' Case, Appendix I, p. 436.

Such expressions as "the whole Colony or only particular parts thereof," "waters or places specified," in Regulations, "within the jurisdiction of the Government of the Colony," are all controlled and limited by the definition of the area of the Colony in the Act of 1863, quoted above.

Ibid., 222.

Ibid., p. 223.

Special attention, however, is invited to the reference to the Act of 1884, which, by section 5, empowers the Governor in Council to make, alter, and revoke Regulations which shall have force and effect only in waters or places specified therein.

Ibid.

Ibid., Appendix I, p. 439.

It is alleged that—

"almost unlimited authority is thus conferred upon the Executive to establish close seasons, and to make Regulations respecting the purchase or sale of fish, including seals, and punishment for violation of the law and orders. The definition in the Act of the term 'waters' indicates that it applies to the entire area of the Colony, of which the south-eastern corner is over 700 miles from the coast of New Zealand, although a few smaller islands intervene."

United States' Case, p. 223.

This is illustrated by a coloured Map, upon which are traced imaginary boundaries of the Colony, which are asserted to be designated in the Act of 1863.

Ibid., Appendix I, p. 437.

The definition of "waters," upon which the argument rests, is in itself sufficient to prove the error:—

"'Waters,' according to the definition, means any salt, fresh, or brackish waters in the Colony, or on the coasts or bays thereof; includes artificial waters, but does not include waters the property of any private person."

Ibid., p. 438.

If "waters in the Colony" included the ocean to a distance of 700 miles from the shore, it would have been unnecessary and absurd to proceed to mention "waters on the coasts or bays" of the Colony.

The quotation in the United States' Case from the "Handbook of the Fisheries of New Zealand" (p. 254) does not accurately represent the original. The Handbook states that—

Ibid., p. 224.

"sealing should not be thrown open without restrictions. Seals are a property the State should jealously guard."

The context, however, shows that the writer refers only to restrictions upon sealing on *land*. Sealing in New Zealand as described in the Handbook is carried on only upon land, and therefore no reference is made to pelagic sealing.

It is stated in the United States' Case that—

"in the Colony of the Cape of Good Hope sealing is prohibited at the rookeries and in the waters adjacent thereto, except under stringent Regulations."

The evidence offered in support of this consists of the following statements:—

W. C. B. Stamp—

"I am told, although I know nothing about it, that Regulations of some kind have been made in the Colony of the Cape of Good Hope."

G. Comer. The rookeries—

"are in the possession or control of a Company, as I was then informed, which has the exclusive right to take seals there. We did not dare to go to those rookeries, because sealing was prohibited, and we would not have been allowed to take them in the waters adjacent thereto."

The only Regulation in force in this Colony is the Government Notice which is printed in the Appendix to the British Commissioners' Report. By this Notice all persons are prohibited—

"from disturbing the seals on the said island" [in Mossel Bay], "and are warned from trespassing there."

The Government Agent states that there is—

"practically no pursuit of the animals in the water on these coasts. . . . The system of killing the seals is the same throughout all the colonial islands, namely, with 'clubs,' by men landing in boats."

It is clear, therefore, that no argument can be derived from the legislation of this Colony.

Turning from the fur-seal to the other varieties of seals, it is alleged in the United States' Case that the latter—

"have thrown about them upon the high seas the guardianship of British Statutes. . . . Canadian Statutes prohibit all persons, without prescribing any marine limit"—

from disturbing or injuring the fisheries.

"Handbook of New Zealand Fisheries," pp. 233-244.

Cape of Good Hope.

United States' Case, p. 224.

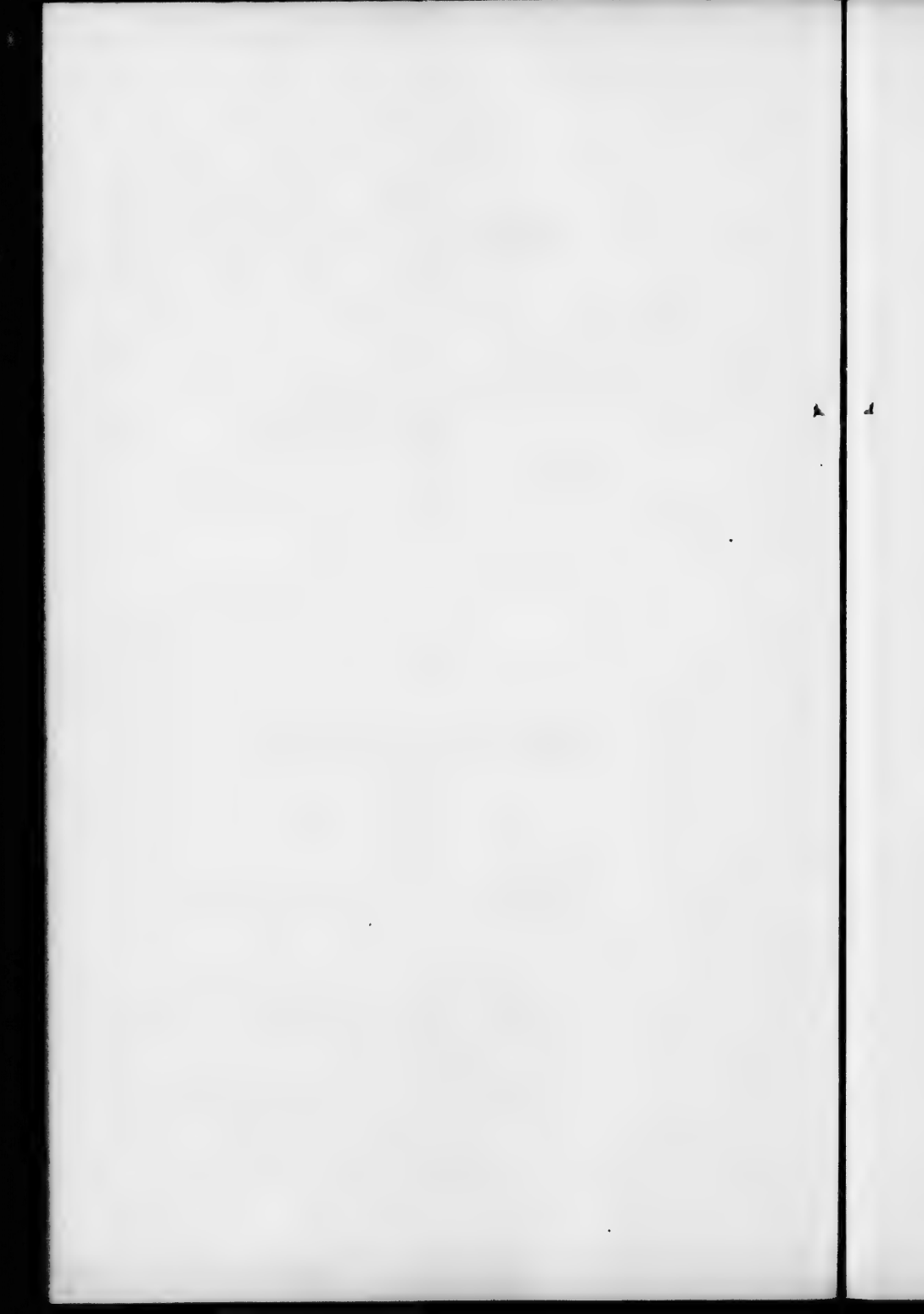
Ibid., Appendix I, p. 576.

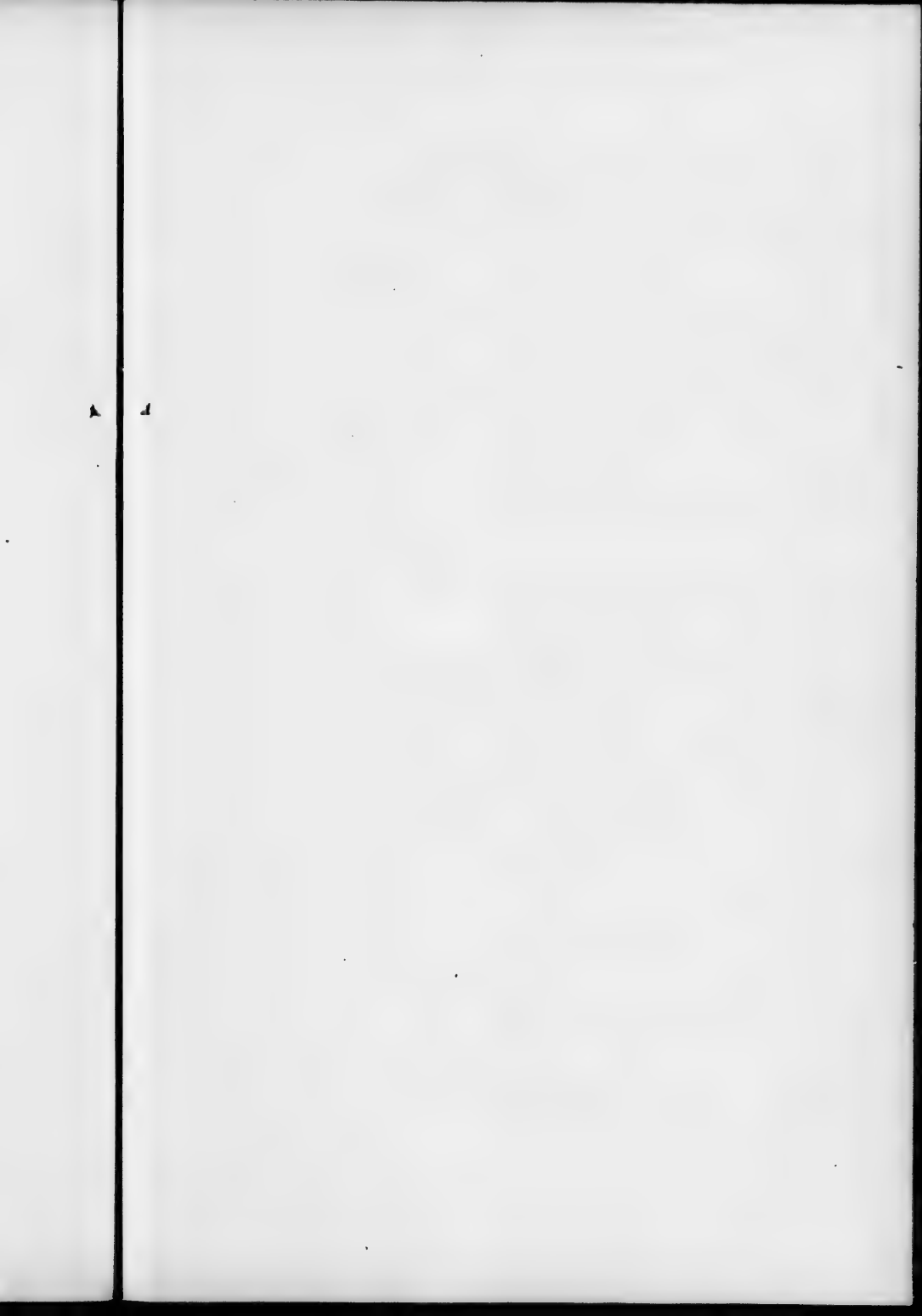
Ibid., p. 5.

Report of British Commissioners, p. 194.

Ibid., p. 155.

United States' Case, p. 225.





The only Canadian Statute referred to is the Fisheries Act of 1886, which undoubtedly affects Canadian subjects upon the high seas and all persons within the territorial waters of Canada, but asserts no further jurisdiction as to persons or locality.

United States' Case, Appendix I, p. 441.

The laws of Newfoundland quoted in the United States' Case are municipal Regulations only, and make no assertion of maritime jurisdiction beyond the 3-mile limit. It may further be remarked that the conditions of the fishery and the habits of the hair seal differ widely from those which are found in the fur-seal fishery.

Newfoundland.

United States' Case, p. 225.

No comment is necessary upon the international Regulations in force in the ocean fishery known as the Jan Mayen Seal Fishery, but a full account of the nature and origin of these Regulations will be found in the British Commissioners' Report, pp. 198-203.

Jan Mayen Seal Fishery.

The Russians laws quoted in the United States' Case, p. 228, appear to be merely municipal Regulations, which do not affect foreigners beyond the usually recognized limit of territorial waters. The rule of international law already referred to has been adopted into the municipal law of Russia, for Article XXI of the Code of Prize Law of 1869 limits the jurisdictional waters of Russia to 3 miles from the shore.

White Sea and Caspian Sea Regulations.

United States' Case, p. 228.

Great Britain's Case, Appendix, vol. II, Part II, No. 19.

The laws of Uruguay which regulate the taking of seals upon the Lobos Islands are strictly confined to the ordinary territorial jurisdiction, and have no application to pelagic sealing beyond that limit. Seals are taken—

Uruguay.

United States' Case, p. 229. Ibid., Appendix I, p. 449.

British Commissioners' Report, p. 169.

"on the islands, and the State does not permit vessels of any kind to anchor off any of the said islands, and does not allow any works to be constructed that might frighten the seals away."

It is asserted that the Governments of Chile and the Argentine Republic—

Cape Horn. Chile.

"have recently given protection to the fur-seals resorting to their coasts, in the hope of restoring their almost exterminated rookeries."

United States' Case, p. 229.

The fact of the extermination seems to be clear, for Mr. G. Comer, of East Haddam, Connecticut, asserts that he caught 4,000 seals in three years (1879-82), and—

Ibid., Appendix II, p. 596.

"practically cleared the rookeries out."

The mischief, however, appears to have been

entirely done by sealers landing on the rookeries.
Mr. Comer states that—

United States'
Case, Appendix II,
p. 598.

"if there had been strict Regulations enforced, allowing us to kill only young 'wigs,' and not to disturb the breeding seals, I am convinced, and have no doubt, that all these rookeries would be full of seals to-day."

The Chilean law referred to appears to be the Ordinance of the 17th August, 1892, from which the following extracts are made in order to show that the Chilean Government asserts no jurisdiction beyond the ordinary 3-mile limit, but is careful to define strictly the limits of the operation of the Ordinance :—

"Ordinance regulating the Pursuit at Sea or on Land of Seals or Sea-wolves, Otters, and 'Chungungos' in the Coasts, Islands, and Territorial Waters of Chile.

"Article 1. Only Chileans and foreigners domiciled in Chile are allowed to engage in the pursuit on land or at sea of seals or sea-wolves, otters, and 'chungungos' in the coasts, islands, and territorial waters of the Republic, as laid down in Article 611 of the Civil Code.

"No ships can engage in the pursuit to which this Ordinance refers except those Chilean vessels which are in possession of the qualifications required by the Navigation Laws to be considered as such, foreign vessels being absolutely prohibited from engaging in this industry.

"Art. 2. For the purposes of this Ordinance, the coasts, islands, and territorial waters of Chile shall be considered as divided into as many zones as there are Maritime Governments in the Republic.

"The extent of each zone shall be that of the respective Maritime Government."

Acting under powers conferred by the above Ordinance, the President of the Republic on the 20th August, 1892, decreed that the fishery of seals—

"be suspended for the period of one year in the regions included in the Maritime Governments of Chiloe and Magellanes, and on the coasts of the Islands of Juan Fernandez."

The general law of Chile as to fisheries is clearly stated in the following :—



"*Extracts (Translations) from the 'Boletín de la Sociedad de Fomento Fabril' ('Journal of the Association for the Promotion of Industries') of Chile.* (Numbers for June, July, and August 1885.)

"*'Fishing and Hunting in Chile.'* By Julio Puya. Prize Essay at the National Exhibition, 1884.

"Chapter 5.—*On the necessity of regulating the Fishery Industry with a view to its Preservation* (pp. 322, 323).

"In Chile the industry with which we are dealing is not regulated in any way. There do not exist any Regulations for any special branch of this industry, excepting only in the case of oysters. . . . Such Regulations ought not to be limited to guaranteeing to each individual their full rights; they ought, in addition, to protect these sources of wealth against the avarice of those who imagine they can best make most gain by a sudden appropriation, ignoring all ideas of permanent maintenance of the industry, and thereby consummating the destruction of the industry, whether for themselves or for the general public. . . . In the Civil Code (in section 1 of Article 611) it is enacted:—

"'Sea fisheries are free to all, but fisheries in territorial waters are reserved exclusively for Chileans and domiciled foreigners.'

"Thus, in set terms and clearly, it is declared that foreigners not domiciled in Chile are only forbidden fisheries inside territorial waters. Without doubt it is notorious that for many years past in the territorial waters of the Province of Magellanes, and of the adjacent islands, the industry of taking fur-seals on a wholesale and barbarous plan has been instituted by foreigners not domiciled in Chile, and, what is worse, in vessels flying their own national flags and not the flag of Chile.'

"Chapter 6.—*Provisions of the 'Codigo Civil' as to Fisheries* (pp. 324, 325).

"Let us see whether the products of the fisheries are capable of legal appropriation.

"The Code recognizes, in respect of the sea, a legal distinction, by which is clearly shown which of these products belong to the use and enjoyment of the citizens of some one nation, by common custom and consent, and which to the use and free enjoyment of the whole human race.

"Property in what is taken by Chilean citizens on the high seas is guaranteed by the law of nations, as is set out in Article 585 of the Civil Code:—

"'Things which in their nature are common property, as the product of the high seas, are not subject to any dominion, and no nation, corporation, or individual has any

right to monopolize them. The use or enjoyment of them is determined among the citizens of any one nation by the laws of that nation, but between different nations by international law.'

"The Code states, in Article 593:—

"The adjacent sea, to a distance of 1 marine league, measured from low-water mark, is the territorial sea, and under the national dominion; but police administration for the purposes of the security of the State or the carrying out of fiscal Regulations extends to a distance of 4 marine leagues, measured in the same manner.'

"The Code, in Article 600, dealing with appropriation:—

"The means by which dominion is acquired in things which belong to nobody, and the acquisition of which is not prohibited by the laws of Chile, or by international law,' declares 'that hunting' and fishing are methods of acquisition by which one obtains dominion over wild animals.'

"The Code, in Article 608, declares:—

"Animals are termed wild or savage which live in their nature free and independent of man.'

"In the same Article the Code defines, incidentally, the kinds of animals in which fishing establishes a legitimate proprietary. All those kinds which live in water are by their very nature wild, so that whoever catches them becomes their owner, always provided that he is not acting contrary to the national or the international laws.

"Article 611 enjoins that:—

"Sea fishing is free, but in the territorial seas the right of fishing is enjoyed only by Chilean citizens or domiciled foreigners.'

"Chapter 8.—*Of Fisheries in the High Seas* (pp. 369, 370).

"Thus we see that the use and enjoyment of the high seas is free; no one can assert dominion over them, and no one has any right to appropriate them, and the nation which claims to exclude any other nation from such user does an injury to that nation, and, consequently, to all other nations. . . . The declared opinion of these eminent authorities leads us once more to affirm the principle that on the high seas fishing is free for all animals not being actually pursued, and that no nation can monopolize the fisheries of the deep sea nor the fishery of any special species of animals.'"

Cape Horn

United States'
Case, p. 229

The Argentine laws which refer to seal fishing at Cape Horn are not quoted, but Mr. G. Comer states that—

the first of these is the fact that the
 the second is the fact that the
 the third is the fact that the

the fourth is the fact that the
 the fifth is the fact that the
 the sixth is the fact that the
 the seventh is the fact that the
 the eighth is the fact that the

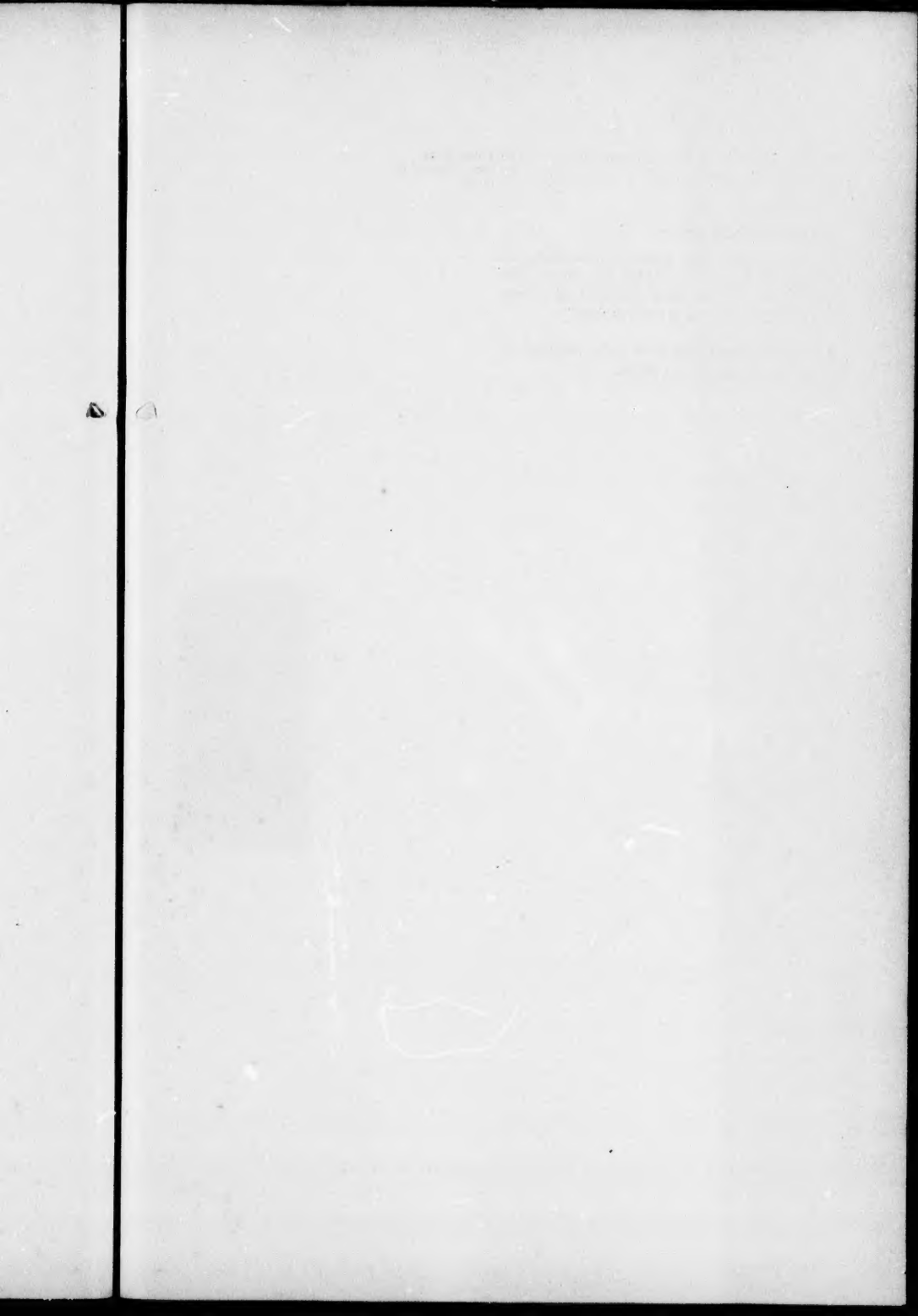
the ninth is the fact that the
 the tenth is the fact that the
 the eleventh is the fact that the
 the twelfth is the fact that the
 the thirteenth is the fact that the

the fourteenth is the fact that the
 the fifteenth is the fact that the
 the sixteenth is the fact that the

the seventeenth is the fact that the
 the eighteenth is the fact that the
 the nineteenth is the fact that the
 the twentieth is the fact that the
 the twenty-first is the fact that the

the twenty-second is the fact that the
 the twenty-third is the fact that the
 the twenty-fourth is the fact that the
 the twenty-fifth is the fact that the
 the twenty-sixth is the fact that the

the twenty-seventh is the fact that the
 the twenty-eighth is the fact that the
 the twenty-ninth is the fact that the



"since 1882 or 1883, we have not been allowed to take seals at that point [Staten Land], or in the waters near there," United States' Case, Appendix II, p. 597.

He further states that—

"the seals inhabiting these shores do not migrate, but always remain on or near the land, only going a short distance in search of food, and at all seasons and in every month of the year seals can be found on shore."

These laws would then seem to be confined to the ordinary jurisdictional limits.

